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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 460

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

THE FALK CORPORATION

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SEVENTH CIRCUIT**

PETITION FOR CERTIORARI FILED OCTOBER 12, 1939
CERTIORARI GRANTED NOVEMBER 13, 1939

IN THE
United States Circuit Court of Appeals
For the Seventh Circuit

No. 6707

NATIONAL LABOR RELATIONS BOARD;

Petitioner;

vs.

THE FALK CORPORATION,

Respondent.

Counsel for Petitioner:

**MR. CHARLES FAHY,
MR. ROBERT B. WATTS,**

Counsel for Respondent:

**MR. LEON B. LAMFROM,
MR. A. J. ENGELHARD,**

Petition for Enforcement of Order of National Labor Relations Board.

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1511 After recess.

(Whereupon, the hearing was resumed, pursuant to recess, at 1:30 o'clock P. M.)

Trial Examiner Batten: All right, gentlemen, I think we will proceed.

HAROLD LANDRY, a witness called by and on behalf of the National Labor Relations Board, previously sworn, resumed the stand and testified further as follows:

Cross-Examination (Continued.)

Q. (By Mr. Lamfrom.) Now, at this meeting of April 12th, at some time or other Mr. Falk was present?

A. I believe.

Q. Take your hands away, will you, so I can hear you? I can't hear you.

A. I believe.

Q. And some conversation was had between him and Mr. Wilfer?

A. As I recollect.

Q. State your best recollection of what Mr. Wilfer said.

A. I believe I have.

Q. (By Trial Examiner Batten.) Well, this is cross-examination. He is asking you, Mr. Landry, to state what Mr. Wilfer said.

A. O. K. I said, as I recollect it, Mr. Wilfer made the suggestion that if the raise were moved up from June 1st until May the 1st, would keep a lot of men from joining the C. I. O.

Q. (By Mr. Lamfrom.) By making the suggestion, do you mean that Wilfer asked Mr. Falk that question? You answered my question in sort of the form of a question.

State what Mr. Wilfer said. I want to get this clear. Did Mr. Wilfer ask Mr. Falk that, or did Wilfer make the suggestion to Mr. Falk?

In other words, what did Mr. Wilfer say?

A. It might have been slightly different. I didn't record the exact words.

Q. I don't care for the exact words. Just state in substance what Wilfer said, and to whom he said it.

A. That is very much the substance of it.

Q. And to whom did he say it?

A. Mr. Falk. "If you push the raise up a month, I think it will keep a lot of fellows from joining the C. I. O."

Q. "If you will push the raise up a month", he thought, Wilfer thought that it would keep a number of men from joining the C. I. O., is that it?

A. I wouldn't swear that he thought it. I didn't mark down the exact words.

Q. Have you given the substance of what Wilfer said, now, to the best of your recollection?

A. That is about the size of it.

Q. Do you know how Mr. Falk happened to be at this meeting?

1513 A. I believe he was requested to be there.

Q. By whom?

A. I couldn't say.

Q. Was it done in the open meeting?

A. Yes.

Q. Nobody objected to it?

A. No.

Q. And when Wilfer said that to Mr. Falk, what did Mr. Falk say?

A. "It may possibly be. We are not so stiff that we can't bend a little. If that is the way the boys think about it, I think we can make it May 1st."

Q. Do you know what Mr. Falk meant when he said "If that is the way the boys feel about it"?

A. I formed my own opinion.

Q. What was your own opinion?

A. That if given the raise a month earlier, it would keep them from joining the C. I. O., that would be a very good reason for pushing it a month ahead.

Q. That was your own opinion?

A. That was my own opinion.

Q. Did you discuss that opinion with any of the others?

A. At that meeting?

Q. Yes.

A. I don't know if I did or not. I probably did.

1514 Q. You think you did?

A. I probably did, because it stuck on my mind.

Q. It stuck on your mind that Mr. Falk was willing to bend if, as we suggested, he could keep the boys from joining the C. I. O.?

A. That is the way it registered in my mind.

Q. At that time did you have any revulsion of feeling that would indicate to you that the Independent was not going to be independent of the company?

Mr. Rissman: I object to the question, and the form of the question. It is entirely improper, as to what his feeling was.

Mr. Lamfrom: But you asked him plenty about his feeling.

Mr. Rissman: I object to the form of the question.

Trial Examiner Batten: I think he may answer the question as to whether or not at that time he had any particular hard feelings in the matter.

Mr. Rissman: That is a different question.

A. I believe the question put to Mr. Falk, and the answer, was sufficient to create an impression on my mind.

Q. (By Mr. Lamfrom.) Had you arrived then at the sequence of your impressions which led you to think that, after all, you had better quit this so-called independent organization, and go over to the C. I. O., or, were you waiting 1515 for more and further evidence of a company tie-up?

Mr. Rissman: I object to the form of the question.

Trial Examiner Batten: He may answer.

Mr. Rissman: There are three questions in one.

A. To be frank, I don't know what the word "sequence" means.

Mr. Lamfrom: Let me explain that.

Q. (By Mr. Lamfrom.) Were you satisfied at this time that there was enough evidence that there was some tie-up between The Falk Corporation and the organization of the Independent Union to lead you to believe that it would be better for you to join the C. I. O., and drop this Independent?

A. That was the first doubt, that was the very beginning of doubt in my mind.

Q. That was the first doubt created.

A. Yes.

Q. That was, of course, before someone had suggested that Mr. Falk might be interviewed, to suggest an attorney.

A. It was before, I believe.

Q. Now, then, didn't Mr. Falk say anything else at this meeting of April 12th?

A. He may have.

Q. Do you remember anything else?

A. He was asked a question.

Q. Yes.

A. I don't recall the question, I don't recall who 1516 asked it, but I do remember he answered that he couldn't give us advice on the subject.

Q. You don't know what the question was?

A. I don't. I have tried to think, but I don't recall. All I can recollect is his answer.

Q. But you do recollect that Mr. Falk stated, in answer to whatever the question was, that he could not give you any advice?

A. That's right.

Q. Did he say anything about the law not permitting him to give any advice?

A. He may have, I wouldn't say.

Q. You wouldn't recollect?

A. I wouldn't recollect.

Q. But you do remember distinctly the statement?

A. That's all I recollect, is those words.

Q. Now, did he say anything else?

A. I don't remember.

Q. Now, it was about that time that some of the men also said that the Independent didn't look so good because Falk was sticking his nose in there, wasn't it?

A. I don't know.

Q. Didn't you testify this morning that at some time at or after this meeting, some remark of that kind had been made?

1517 A. After the meeting, yes.

Q. After Falk had left?

A. That's right.

Q. And while the meeting was in session, someone said he didn't like the set-up because Falk was sticking his nose in it?

A. I believe I said it.

Q. You believe you said it. Was that commented upon by any of the other men present?

A. I don't remember.

Q. You made the remark which we have indicated in the question and answer, and you don't remember whether anybody else said anything about it at all?

A. Those present at the meeting, you are speaking of?

Q. Yes.

A. Why, I believe I—I didn't think it was right, I believe I expressed that opinion, but I wouldn't swear for certain that was at that meeting.

Q. That was quite an important matter, wasn't it?

A. I considered it as such.

Q. Yes. That is, you were giving to the rest of your fellow workers assembled the idea you thought there was something that wasn't right about this thing, weren't you?

A. I gave them my impression.

Q. Now, you don't remember whether anybody commented upon your statement giving your impression, do you?

A. I don't recall.

Q. You don't recall?

A. They may have. I don't say they didn't.

Q. But you don't recall whether they did?

A. I don't.

Q. Now, on April 13th, there was another meeting that you attended. Do you remember that?

A. Yes.

Q. Did Mr. Harold Falk at any time attend that meeting?

A. I don't remember him being there.

Q. You don't remember him being there?

A. No.

Q. Do you remember whether Richard Falk was there?

A. I believe he was. Now, I wouldn't answer for certain. He was at some meeting that I was at. I don't know if it was that one, or the next day.

Q. You were having a good number of meetings, and you can't just remember all the details?

A. That is in April.

Q. Now, at that meeting, or at a subsequent meeting Richard Falk was there, wasn't he?

A. Yes.

Q. Do you know who called him?

A. I don't.

1519 Q. He didn't just walk in, did he?

A. I couldn't say if he was called or not.

Q. You don't know?

A. I don't, to be honest with you.

Q. Some conversation was had with him by some of the men?

A. Yes.

Q. Now, state what the conversation between the men and Richard Falk was?

A. I don't remember the questions that he was asked. I do remember him saying something about it costing \$5 to

incorporate an independent union, and that three men would be necessary to sign the papers of incorporation.

Q. Do you recall anything else he said?

A. Yes.

Q. What?

A. In answer to a question I asked him. Do you want the question, or just his answer?

Q. Go ahead, just as you want to put it.

A. It was where I was trying to get something there that the men would like, I asked him if it would be possible to have outside representatives or officers to represent this independent union, we could vote for them, and he replied that he believed that we could.

Q. Was that question—was that conversation pursued any further, or was that the end of it?

1520 A. I think that was the end.

Q. How long did Richard Falk remain at the meeting?

A. I don't know.

Q. Well, he wasn't there for any length of time?

A. He wasn't there very long.

Q. When was the next meeting that Mr. Harold Falk was present?

A. I don't know that he was at any more.

Q. Do you remember any conversation that you had with Harold Falk after this meeting of April 12th, or the one of April 13th?

A. I have had many conversations with him.

Q. Well, respecting this particular question affecting the organization of the Independent Union.

A. Well, he approached me in the shop a day or two later.

Q. After what?

A. To be perfectly frank, it was after May 5th. Now, he may have talked to me before that. I have had many conversations, you understand.

Q. I understand. You and Mr. Falk have been very friendly, haven't you?

A. Fairly.

Q. I mean, you have exchange greetings.

A. We have exchanged greetings.

Q. And conversations.

1521 A. That's right.

Q. And views?

A. Oh, yes.

Q. Referring, however, to the time that these meetings were occurring, did you have any conversations with him, or were you present at any time of any conversation?

A. I had one very short conversation with him.

Q. Where was that?

A. I believe it was the day that two meetings were held.

Q. Two meetings were held. That was the 14th, I believe?

A. I don't know the date, I don't remember the date.

Q. Where did you have this conversation with him?

A. Right near my machine.

Q. What was the conversation?

A. We had been contemplating—the conversation?

Q. Yes.

A. Oh, I asked him "What did you find out?" He said "I just told the boys. Go back out in the meeting and get it straightened out, or settled."

Q. Get what straightened out, or settled?

A. You asked me the conversation, I just answered the conversation.

Q. I don't understand you yet. He said something, to go out and get it straightened?

Mr. Rissman: I object.

1522 A. You asked me the incident leading up there to the conversation.

Mr. Rissman: Just a minute, the question calls for the conversation, and the witness answered it. If Mr. Lamfrom wants to inquire further, he should not try to put it this way.

Mr. Lamfrom: I confess I am puzzled, when I ask for a conversation, and the witness repeats that somebody said "Go out and get it settled up." By "conversation," I mean an exchange of words between two parties.

Trial Examiner Batten: I presume you could ask him what it meant, I don't know.

Mr. Lamfrom: I don't understand it.

The Witness: I have been cautioned several times to answer the question, and I am trying to.

Q. (By Mr. Lamfrom.) Go ahead.

A. You asked me the conversation. I gave it to you.

Q. Harold Falk said something to you?

A. That is what he said, what I told you.

Q. In other words, while you were working in the shop, he came up to you and said "Go out to the meeting and get it settled," something like that?

A. I walked over to him, about 10 feet from my machine,

and I said "What did you find out?" He said "I just told the boys. Go out to the meeting with them, and get it straightened out."

1523 Q. And when you asked him what did he find out, what did you refer to?

A. I don't remember what it was.

Q. You don't remember that now?

A. I honestly don't remember. It was something in connection with this incorporation, or some of that stuff.

Q. You do remember that you asked him "What did you find out?" But now you don't remember what you were asking him what he found out about?

A. That is absolutely correct. At that time I did know what I was referring to, but I have since forgotten.

Q. You haven't the slightest idea now what it was, have you?

A. I haven't, although I believe it was something with reference to this incorporation.

Q. You were interested enough to go to Mr. Harold Falk as he was passing through the plant, as I understand, and ask him "What did you find out?" and he said "Go out to the boys," and so forth.

Trial Examiner Batten: I don't think there is any testimony that he went up to Mr. Harold Falk, Mr. Lamfrom.

Mr. Lamfrom: I thought he said that.

The Witness: I did.

Q. By Trial Examiner Batten.) You went up to him?

A. Yes.

1524 Mr. Lamfrom: Yes.

The Witness: Pardon me. If I may be permitted to explain the events leading up to that, instead of merely answering your questions, I believe I could put it clearer.

Q. (By Mr. Lamfrom) Suppose you let me handle it, for the present, in my own manner.

A. Proceed.

Q. It is right, then, is it, that this incident was as follows: That while you were working in the plant, Mr. Falk was passing through the plant.

A. That's right.

Q. And you went up to him and asked him "What have you found out?" And Mr. Falk said—repeat what he said, will you please?

A. "I just told the boys. Go out in the meeting with them, and get it straightened out."

Q. And that is all the conversation that took place between you?

A. He kept right on going then. He had been—well, all right.

Q. Go ahead.

A. He had been talking. The reason I went to him, we had been in meetings previous, and we were waiting for him to come back with some information regarding the incorporation, or something, to do with the Independent Union. 1525 He didn't arrive, and we waited a considerable time, and we decided to go back out in the shop. I wasn't at my machine more than a short time when Mr. Falk came in, he was talking to some of the other men just about ten feet from where I work now, I imagine regarding the subject.

Q. I don't care for your imagination.

A. All right. He was talking to them.

Q. Yes.

A. One of them, I know, was Stanley Adamski, and I believe Johnnie Mitchka was there; and just as I walked over there, he had apparently finished talking to them, because he started to walk away, and I naturally said "What did you find out?"

Q. And now you know what you were asking him?

A. I don't. Didn't I say I don't know?

Q. Yes, that is what you said.

A. All right.

Q. But it seems to me quite apparent that you did know.

A. It is not.

Q. Did you have any further or other conversation with Mr. Falk about this time?

A. Not that I remember.

Q. Do you remember any other meetings other than those you have testified to that Mr. Falk attended?

A. I don't think he attended any more, as far as I remember.

1526 Q. That's all I can ask you for. You have testified, if I am correct, that Mr. Harold Falk attended one meeting.

A. Yes.

Q. Then you didn't see him at any other meeting?

A. Not at a meeting.

Q. You also testified that Mr. Richard Falk attended at one meeting?

A. That's right.

Q. And you didn't see him at any other meeting.

A. I don't think so.

Q. Was there any other official of The Falk Corporation at any of these meetings?

A. Not that I recall.

Q. Was Mr. Connell there?

A. He may have been. I don't recall it.

Q. You don't recall of any of them?

A. I don't.

Q. But you wouldn't say, of course—

A. They may have been there.

Q. (Continuing)—that they were not there, or were not called in? You don't know?

A. I don't know. I don't remember them being there.

Q. After these meetings on April 14th, you went down to Mr. Burke's office with a committee. That is right, is it not?

A. I don't remember the date I went down there.

1527 Q. That was shortly after April 14th, wasn't it?

A. I don't recall the date. I did go with the committee that went to Mr. Burke's office.

Q. And you have testified to certain conversations that took place at Mr. Burke's office.

A. I believe so.

Mr. Lamfrom: Take the witness.

Q. (By Mr. Clark). You said you joined the C. I. O. in the week of April 11th. Can you place the date?

A. I can't; the latter part of the week.

Q. Now, after these meetings at the Falk plant, you went to the office of Alexander, Burke & Clark?

A. That's right.

Q. And what time of day was that?

A. I believe it was about 10 o'clock in the morning.

Q. And how many was in that party that came there?

A. I couldn't say; about ten I believe.

Q. If I name these men, would you tell me whether these men were there?

A. I will try to.

Q. Mr. Kirsch?

A. I believe he was.

Q. Mr. Mitchka?

A. Yes.

— Q. Mr. Greget?

1528 A. I believe he was.

Q. Mr. Adamski?

A. Yes.

Q. Mr. Trost?

A. Yes, sir. I wouldn't swear for certain on him.

Q. Mr. Dan Martin?

A. I don't know him.

Q. Mr. Wolf?

A. I think Mr. Wolf was there, yes.

Q. Mr. Krueger?

A. That's right.

Q. And Mr. H. Jones?

A. Yes.

Q. And yourself?

A. Correct.

Q. Now, who was the spokesman for that committee, do you remember?

A. I doubt if there was any.

Q. You asked some questions, didn't you?

A. I believe we all did.

Q. And you heard what happened there?

A. I believe so.

Q. Now, besides the ten that have been mentioned, who else was in the room?

A. Mr. Burke,—and yourself? I couldn't swear;
1529 some other attorney; I believe it was you.

Q. Don't you remember me being there?

A. I remember another attorney. I don't recollect that it was you. It may have been. I am not saying it wasn't.

Q. He didn't make much of an impression.

A. He didn't.

Q. Do you remember, Mr. Landry, at that time asking what right these men had to form an independent union?

A. I don't remember it. I may have asked it.

Q. Do you remember the other attorney, whose name you don't know, reading from the decisions of the United States Supreme Court that were handed down two days before that?

A. I can't say as I could say it was exactly that. I don't remember what it was.

Q. Do you remember this other lawyer explaining his version of the Wagner law?

A. Yes, I do believe I remember that.

Q. Don't you remember his citing and reading from decisions out of a paper pamphlet?

A. I don't know what they were read out of.

Q. You remember some explanation of the Wagner law as outlined in these decisions of the United States Supreme Court?

A. Yes, I believe they were in connection with the Independent Union.

Q. And the statement was made at that time by Mr. 1530 Burke that you could form or join any union you wished, is that right?

A. I believe so.

Q. And a general discussion was had as to how the matter was to be set up?

A. That's right.

Q. Now, on the day you were at the office of Alexander, Burke & Clark, can you fix the date?

A. I can't.

Q. Was it the 14th of last April?

A. I wouldn't say what date it was.

Q. With reference to the last meeting under the hospital, at the plant, what day was it?

A. I wouldn't attempt to say. I didn't take much—pay much attention to the date. I paid more attention to the fact.

Q. What fact did you pay attention to?

A. Such as I have been relating.

Q. Was the question as to the form of the organization taken up at that meeting?

A. Which meeting?

Q. At our office, Alexander, Burke & Clark's office.

A. Whether it was to be incorporated, for an association?

Q. Yes.

A. I believe it was discussed.

1531 Q. Was there anything said about a name to be given to this organization?

A. Yes.

Q. Who suggested the name, if you know?

A. Everybody suggested one, pretty near.

Q. And everyone seemed to be of the opinion that it should be called the Independent Union?

A. That was the final wind-up.

Q. And that included you?

A. I suggested something, that the name started "Amalgamated," some way.

Q. Why did you suggest "Amalgamated"?

A. I wanted it to sound good.

Q. You wanted it to sound like the organization that you had been belonging to?

A. A kind of bona fide name.

Q. Please answer my question.

Mr. Rissman: I object to that question. There is no testimony that he belonged to any organization.

Trial Examiner Batten: What was the question, please?

(The question was read.)

A. I didn't belong to any organization at that time.

Q. (By Mr. Clark) Had you been solicited for the Amalgamated Association of Iron, Steel and Tin Workers?

A. I had not.

1532 Q. Had you heard the name?

A. Oh, yes.

Q. Then that was the reason you suggested "Amalgamated" in this name, was it?

A. I didn't say it was.

Q. What was it?

A. I thought "Amalgamated" was a fine name.

Q. Now, Mr. Landry, what if any discussion did you have at that meeting in the office of Alexander, Burke & Clark?

A. I just got through saying that I suggested that name.

Q. What else?

A. To be frank, I don't know what else. We all was talking more or less there, how long this would take, and that; and how much it would cost to incorporate, and who was going to sign it and where it had to go, where it had to be registered.

Q. And Mr. Burke outlined about what the procedure might be?

A. I believe so.

Q. And the divergency between an association and a corporation, did he?

A. He may have.

Q. Did he say that some of these organizations were being formed as corporations?

A. He may have.

Q. Were the names of any of these independent unions mentioned at that time?

A. I don't remember.

1533 Q. Now, did you know at that time Mr. Harold Falk had suggested the name of Mr. Burke as an attorney?

A. Oh, yes.

Q. Was anything said about who suggested Mr. Burke at that time?

A. I couldn't say. I don't remember.

Q. You don't remember whether anything was said about that.

A. At that meeting, you mean?

Q. Now, with reference to the meeting of the 12th, at the plant, April 20th, under the hospital, what names of lawyers did you suggest at that meeting?

A. I merely suggested that there were plenty of good labor lawyers, like Mr. Padway and Mr. Quick.

Q. Who did you have in mind?

A. I didn't say.

Q. Didn't you have anybody in mind except Mr. Padway and Mr. Quick?

A. I may have, but I didn't mention their names.

Q. You don't remember who you might have had in mind?

A. I don't.

Q. Did you hear the name of Clinton McCarthy mentioned?

A. I don't remember. It may have been mentioned.

Q. Do you know who Mr. McCarthy is?

A. I do not.

Q. You knew he has been employed by members of 1534 your plant out there, did you?

A. I never heard the name before.

Q. You didn't know anything about it?

A. I don't know a thing about it.

Q. Did you know at that time that there had been a meeting of employees at the Falk plant for the purpose of forming an independent union?

A. No, I didn't know there had been any then yet.

Q. The only action taken by any employees, as far as a union other than the American Federation of Labor and the C. I. O., is this incident you are talking about?

A. Coming to Mr. Burke's office.

Q. Did you know of the draftsman and engineers having a meeting for the purpose of forming an organization?

A. They may have had it. I didn't know about it.

Q. You didn't know about it?

A. I didn't.

Q. Now, at the time this committee was appointed to see Mr. Falk concerning the name of the lawyer, did you object to that?

A. I don't believe at the moment I did. I wasn't the chairman that done the appointing.

Q. Did you ever object to it?

A. Oh, yes.

Q. When?

1535 A. When they came back.

Q. What did you say?

A. I believe I have related it about four times now, that during the discussion, somebody else started the discussion as to what they would say if asked who recommended or suggested the lawyer, and I said if anybody asked me, I would say Harold Falk, because there is so many knows about it, and it is no use, it is going to get out anyhow.

Q. If you thought it wouldn't get out, it was all right for you not to mention who suggested it, is that it?

Mr. Rissman: I object to that. He stated his objection to it. It is entirely immaterial what he thought about it. He is reciting the fact as to the recommendation of the attorney, and the statement and conversations he had with the other men.

Trial Examiner Batten: He may answer the question.

The Witness: You will have to give it to me again.

(The question was read.)

A. No, sir. That was a suggestion or discussion between the other members who were trying to dig up a story. I didn't try to make any story to give. I had intended—

Q. (By Mr. Clark.) Well, you made—well, excuse me. Had you finished?

A. I intended to tell the truth, and I so told them.

Q. Your reason for saying it was because there were
1536 too many, and it would get out anyway?

Mr. Rissman: I object.

A. The reason I said it?

Q. (By Mr. Clark.) That is the reason you did, didn't you?

A. Sir?

Q. Isn't that the reason you gave, "There are too many here, and it will get out anyway, and so we might as well tell them"?

A. That is why I objected?

Q. Isn't it?

A. Absolutely not.

Q. Why did you object to it?

A. Because of the fact that Mr. Harold Falk had suggested the attorney, and the fact that they were attempting to cloak that statement, that fact.

Q. What was done about cloaking that fact?

A. Nothing. There was one or two—there might have been some others in accord with me. My little voice was lost in the shuffle, there were too many.

Q. Had you finished?

A. Practically.

Q. You were the only one of the ten, then, that opposed the idea of telling who suggested the attorney?

A. I wasn't opposed to telling who suggested the attorney.

I was entirely in favor of telling who suggested the attorney.

Q. You were the only one of the ten who voiced any objection to hiding who suggested the attorney?

Mr. Rissman: I object to that.

Q. (By Mr. Clark.) Is that right?

Mr. Rissman: There is no testimony as to whether he was the only one who had admitted it.

Mr. Clark: That is what I am asking him.

Trial Examiner Batten: He just asked him if he was the only one.

Mr. Rissman: He is telling him. He is not asking him.

Q. (By Mr. Clark.) Well, were you?

Q. (By Trial Examiner Batten.) Were you the only one who objected to devising some story?

A. That I don't remember. I believe so. I don't believe anybody else spoke about it.

Q. (By Mr. Clark.) Do you know whether any of the ten men who went to the office of Alexander, Burke & Clark were then members of the C. I. O.?

A. I don't know.

Q. As I understand it, Mr. J. Wolf, Mr. William Kreger, Mr. Jones and yourself are now members of the C. I. O.?

A. I believe that is correct, as far as I know.

Q. Do you know when they went into the C. I. O.?

A. I don't.

1538 Q. After this meeting at the office of Alexander, Burke & Clark, you never went back to that office, did you?

A. I didn't.

Q. What was decided at that meeting that you were at, as to the formation of an organization?

A. I don't remember all the details. I believe it was decided to run along as an association, as far as I recollect.

Q. And you left with that impression?

A. Yes.

Q. Now, when did you see notices posted as to a meeting after that?

A. I don't know when I seen them. I did see notices, I believe.

Q. And that notice was directed to all of the employees of the Falk plant, wasn't it?

A. Excepting management, and foremen, and such-like.

Q. And a meeting was held that Sunday afternoon, the following Sunday, on the 18th of April?

A. I believe that is the date.

Q. That is the meeting at the North Avenue Auditorium?

A. I think so.

Q. You were there?

A. Yes.

Q. You were up on the stage?

A. Yes.

1539 Q. Were the rest of these ten men up on the stage, too?

A. I couldn't say. I don't remember who was all there.

Q. About how many men were on the stage?

A. I wouldn't attempt to guess. I don't remember. I didn't count them. It has not impressed me, just which ones were there. I do know that I seen Mr. Greget, and I believe Mr. Trost, and I believe Mr. Kirsch remain in my mind as being up there.

Q. Having in mind that that was the 18th when you went to that meeting, were you a member of the C. I. O.?

A. I had signed an application, yes.

Q. When?

A. I don't remember. To be frank, I believe it was on Friday. I wouldn't swear whether it was Friday. I think it was Friday. That is the closest I could say.

Q. Did you agree not to belong to any other organization in that application?

A. I didn't.

Q. What is the form of that application?

A. Merely making an application for membership in the Amalgamated Association of Iron, Steel and Tin Workers.

Q. Did you pay any money?

A. I did not.

Q. Was it your understanding that you could join as many of these labor organizations as you wished?

1540 A. No.

Q. Now, when you went to the meeting on the 18th, you had no idea of joining another organization?

A. I had made application, I could be rejected.

Q. What was your thought? Did you feel that you were then a member of the C. I. O., that you were not interested in joining any other?

A. That was for them to decide, not me.

Q. No. What did you think?

A. I naturally wished they would accept me as a member.

Q. Then why did you go to the meeting of the 18th?

Mr. Rissman: I object. There is nothing inconsistent with his going to the meeting of the Independent Union after merely signing an application for the C. I. O.

Mr. Clark: If there is nothing inconsistent, I see no reason why he couldn't say so.

Mr. Rissman: He has given his reason for being there.

Trial Examiner Batten: He may answer why he went.

A. I don't know who told me to go, or asked me to go. They said there was a meeting, we should all be there. Somebody said it to me, practically requested me to be there, or asked me to be there.

Q. (By Mr. Clark.) What did you think the purpose of that meeting was?

A. I knew what it was.

1541 Q. What?

A. To recruit members for the Independent Union.

Q. There wasn't any Independent Union, as far as you knew, at that time?

A. Mr. Greget said there was.

Q. As far as you knew?

A. No, I am not an authority on it.

Q. The last you knew was the meeting at Alexander, Burke & Clark's office, when they agreed to go along as an association?

A. Sure.

Q. You didn't hear anything about it until someone told you of this meeting to be held on the 18th?

A. Certainly, I knew about. I was given application blanks, and at that time it was common news. I don't know who told me on Friday. I believe it was that there would

be a meeting Sunday, and that they would sign up new members and talk it over. Of course I knew it.

Q. Was it your understanding that this meeting of the 18th was a meeting of the Independent Union?

A. I believe all employees were invited.

Q. And it wasn't limited to members?

A. Not that I recall.

Q. At this meeting, someone asked who had suggested the attorney?

1542 A. That is correct.

Q. Who asked that question?

A. I couldn't tell you.

Q. Did you tell the man to ask that question?

A. I did not.

Q. When the question was asked, did you make any effort to tell who had suggested the attorney?

A. I didn't get a chance.

Q. Everything was in confusion?

A. Mr. Greget pretty near broke his legs to get up there and explain it.

Q. Everything was kind of confused, though?

A. No, I wouldn't say it was.

Mr. Rissman: I object. He has not testified so.

Q. (By Mr. Clark) Why do you say you didn't get a chance to answer?

A. Mr. Greget bounced off that chair like he was sitting on a tack. He knew the statement was directed to him.

Q. Why do you say that?

A. Because it was at his suggestion that they went to Mr. Harold Falk.

Q. Now, Mr. Landry, someone from the floor asked, "Who suggested the attorney for this", didn't they?

A. Correct. They also—

Q. Now, just a minute.

1543 Mr. Rissman: Let him finish the answer.

Mr. Clark: He answered.

Q. (By Mr. Clark) Who was presiding at that time?

Mr. Rissman: I object to not letting the witness finish his statement.

Trial Examiner Batten: Just a minute. Go ahead, Mr. Clark.

Q. (By Mr. Clark) Who was presiding at the meeting at that time?

A. I believe, while all the officers were absent, or those

that were supposed to be starting this independent union, that the multitude had some kind of an election, and elected Mr. Norman Bryce temporary chairman, while all of us who were supposed to be running it, were downstairs waiting for Mr. Greget.

Q. Weren't you there when the question was asked?

A. You bet I was.

Q. Who was presiding when the question was asked?

A. I don't remember; most likely it was Mr. Bryce.

Q. It wasn't Mr. Greget, was it?

A. I couldn't say. I just say "most likely".

Q. After Mr. Greget made his statement, did you offer any statement?

A. Not from the platform, no.

Q. You left at that time, didn't you?

1544 A. I didn't.

Q. When was it you left the stage at that meeting?

A. I believe it was about three-thirty, when the majority left.

Q. Why didn't you make the explanation that Mr. Falk suggested the attorney?

A. Mr. Greget answered it once.

Q. And that satisfied you?

A. It didn't satisfy me, no.

Q. Well, why didn't you then give your explanation?

A. Because I felt I was amongst a bunch of men whose ideas were alien to mine, and I intended to convey my ideas personally.

Q. You felt you were intruding at that meeting, did you?

A. I felt that we differed very much.

Q. You had already applied for membership in the C. I. O.?

A. That is correct.

Q. And no matter what this organization did, or how many did it, you were not going to be a party to it?

A. Not necessarily.

Mr. Rissman: I object to that. He can answer what he favored and what he opposed at this organization meeting, but there is not going to be any blanket statement about it.

Trial Examiner Batten: I think he can answer. I think he is perfectly able to take care of himself.

1545 The Witness: Thank you.

Mr. Rissman: I grant that. That is not why I object. I object because of the form of the question pending

on the record. The witness certainly can take care of himself.

Trial Examiner Batten: What is the question?

(The question and answer were read.)

Trial Examiner Batten: I think that is a perfectly proper question. He may answer.

A. The answer is there.

Trial Examiner Batten: Well, it may stand.

Q. (By Mr. Clark) Now, Mr. Landry, on direct examination you were asked why you went to that meeting and you said you felt you were one of their members and fellows, and had a right to be there.

Mr. Rissman: Just a minute. That is a misstatement of the testimony, if the Examiner please.

Mr. Clark: That is the note I have.

Mr. Rissman: The notes may be in error.

Trial Examiner Batten: Do you have a note of it, Mr. Rissman?

Mr. Rissman: I have not, but I know that is not the statement.

Q. (By Trial Examiner Batten) Do you recall what you said?

A. I don't recall what I said.

Mr. Rissman: You may ask him his reasons again, 1546 but I object to leading or telling him what he testified.

Trial Examiner Batten: What was the question?

Mr. Clark: I will ask the question.

Q. (By Mr. Clark) Why were you at the meeting of April the 18th?

A. Common interest of the men.

Q. You had the interests of the employees of the Falk company at heart?

A. Always.

Q. And although you had applied for membership in the C. I. O., and your impression was this was a meeting to form a rival organization, you felt free to go to it, is that right?

A. I was invited to it.

Q. Did you tell anybody that invited you that you had applied for membership in the C. I. O.?

A. I didn't ask anybody to invite me. They invited me.

Q. As you understand it now, this was a general meeting of all employees of the Falk Company?

A. Regardless, yes.

Q. It wasn't limited to members, or those who had signed

applications for membership in the independent organization?

A. No.

Q. There was a meeting of the C. I. O. on April 18th, too, wasn't there?

1547 A. I believe so.

Q. And you went directly from the meeting of the Falk Company at the North Avenue Auditorium, to the C. I. O. meeting?

A. As fast as I could go.

Q. And told them everything you had heard?

A. I didn't.

Mr. Rissman: I object to that. He has not testified he told them anything.

Q. (By Mr. Clark) Well, did you?

A. I did not.

Q. What did you say?

A. As a matter of fact, I was busy defending myself there for quite a while. A great big bruiser collared me by the bar and he said, "You are an Independent guy", and he was going to take a poke at me.

Q. He was a member of the C. I. O., was he?

A. I don't know what he was. He was a member of the Falk Company, that I know. I later found out he did belong to the C. I. O.

Q. Who was it?

A. I don't recall who it was. I just remember him being quite a good sized man, much bigger than I was.

Q. He was going to take a poke at you because you were a member of the Independent Union?

A. He thought I was a spy and he frankly said, 1548 "Why are you here?"

Q. Why were you there?

Mr. Rissman: Where? At the C. I. O., or the Independent meeting?

Mr. Clark: At the Independent meeting.

Mr. Rissman: I think he has stated that three times, if the Examiner please.

A. I was there more or less by request. I will state it. There was no distinction made when I was asked, if I was C. I. O. I couldn't come, or anything else. I was informed there was a meeting, and asked to be there, and I was.

Q. (By Mr. Clark) Why did you hurry over to the meeting of the C. I. O.?

A. There wasn't much time between the end of one, and the start of the other.

Q. Was it important that you get to the C. I. O. meeting?

A. To me it was.

Q. Why?

A. I wanted to see the difference between them.

Q. Isn't it a fact that you wanted to tell them what you had heard at the other meeting?

Mr. Rissman: I object to that question.

Trial Examiner Batten: Let him answer.

Mr. Rissman: He said he didn't tell them anything and I object to the inference of this examination.

1549 Trial Examiner Batten: There is no inference there as far as the Examiner is concerned, none whatever.

Mr. Rissman: It is an improper question, Mr. Examiner.

Q. (By Trial Examiner Batten.) Do you remember the question?

A. He wanted to know if I hurried over there to tell them what happened.

Q. Yes. Well, did you?

A. No.

Q. When you got there, did you tell them anything?

A. No, I didn't. As I say, I was busy defending myself there for some time.

Q. (By Mr. Clark.) When this big bruiser you talk about threatened to take a poke at you, what was your explanation as to why you were at the Independent meeting?

A. I said, "You don't know me, or you wouldn't be wanting to take a poke at me."

Q. Did you tell him, "I am a member of your C. I. O."?

A. I don't think I did. I said, "We can always find out most of these things, and then decide, and if you knew me as the other boys do, you would know I am always working for the interests of the majority."

Q. And then you proceeded to tell him what happened at the other meeting?

Mr. Rissman: I object.

1550 Trial Examiner Batten: Now, Mr. Clark, I don't see any need of referring to that any more. The witness has said two or three times he didn't say anything. There is no use, for the purpose of the record, of building that thing up.

Mr. Clark: It is not my understanding that he stated two

or three times, or even once, that he didn't tell this man, who he calls a big bruiser—

Trial Examiner Batten: You didn't say "this man" in the last question.

Mr. Clark: Yes.

Trial Examiner Batten: Will you read the question?

(The question was read.)

Trial Examiner Batten: You will pardon me. I thought you said "proceeded to tell them."

Mr. Rissman: That was my impression, too.

The Witness: Am I supposed to answer that?

Trial Examiner Batten: Yes, you may answer it.

A. I believe I said two or three times I was busy defending myself. I was more concerned with not getting a punch in the snoot than I was in what I said.

Q. (By Mr. Clark.) What did you say in your defense?

A. That he didn't know me; that I was merely trying to find out which union was going to do us the most good, which would be the most beneficial for us, and which the men most preferred.

Q. And that you were at the other meeting only to 1551 find out what they were doing?

A. Naturally I went there to find out what they were doing.

Q. Why didn't you say so?

A. What do you think I went there for? A happy afternoon?

Mr. Rissman: Just answer the question, Mr. Landry.

Mr. Clark: I want to know what you went there for.

Q. (By Mr. Clark.) Now, Mr. Landry, why did you join the C. I. O.?

A. How many times did I answer that already?

Trial Examiner Batten: Even though you have, Mr. Landry, the question is, why did you join the C. I. O.?

A. Well, I feel I have stated the reason three or four times.

Trial Examiner Batten: Well, state them again. That is all right.

A. Through my experience with the way I believed the independent union would be started out, I thought the company had something in there, and also through the fact that 90 or 98 per cent or something like that of the shift that I worked with had already joined the C. I. O. and that I am always in favor of whatever the majority of the boys want.

Q. (By Mr. Clark.) That is, no matter what organization the 98 per cent belonged to, you were willing to go with that organization?

A. I believe.

1552 Q. If 98 per cent had applied in the Independent, you would have accepted that?

A. I think so.

Q. So that the advantages that you talk about of the C. I. O. over the Independent don't make any difference to you?

A. I didn't say that.

Q. Well, I would like to know.

A. That is very likely the reason that the majority prefer the C. I. O., for the advantages of it over the Independent Union.

Q. Well now, Mr. Landry, was it the fact you thought the C. I. O. was a better organization for your purpose, or the fact that 98 per cent of your shift had applied for membership in the C. I. O. that controlled your joining?

Mr. Rissman: I object to the question, if the Examiner please, and to this entire line of questioning. Mr. Landry's personal actions in this case are not on trial. We are here to determine several matters: First, if the company engaged in unfair labor practices, and among those things is the method of formation and administration of the Independent Union. I do not believe that Mr. Landry's personal reasons for joining one union, and not joining another, are going to be helpful in any way in determining whether or not the company has engaged in unfair labor practices, and I believe that
any examination on any point other than the method of
1553 organization of the Independent Union, and the evidence that Mr. Landry has given us as to why he believes it was company-dominated, or that the company had something to do with it; are improper.

Trial Examiner Batten: Well, I question very much as to how material they are. However, there has been a great deal of latitude so far in this hearing, Mr. Rissman, and I have no—

Mr. Clark: I feel this:—

Trial Examiner Batten: Just a minute, Mr. Clark, until I get through.

Mr. Clark: Excuse me.

Trial Examiner Batten: (Continuing.) —and I have no idea that we should begin now to closely draw the line. I think Mr. Clark may proceed with his cross-examination. As I say,

I question very much as to whether or not these questions are material to the issues in this case.

Mr. Rissman: Except, if the Examiner please, if they are not material to the issues in the case, and the Examiner feels that way, we should not take the time to go into those matters.

Trial Examiner Batten: I just said, Mr. Rissman, that so far in this hearing certainly there has been unlimited latitude for the presentation of evidence, and I do not propose at this time to begin to draw a fine line of distinction, and so I will permit him to answer the question, and whatever materiality it has, it will be in the record to be given consideration.

The Witness: Please repeat the question.

(The question was read.)

Mr. Rissman: I object to that question, because he had not indicated that either one of those things controlled the joining.

Mr. Clark: I submit he has answered in his direct examination one reason was that he thought it was a better organization, and another was that 98 per cent of his shift had joined, therefore, he was always with the gang, "I always went with the boys, I will stick with them."

Trial Examiner Batten: I don't think there is any question about Mr. Landry's testimony, and I don't see any inconsistency in it in this respect thus far, none whatever. If you will read the question to Mr. Landry, you can answer it, Mr. Landry.

(The question was read.)

A. That never controlled my joining. I formed my own opinion that I thought it was better, and the fact that 98 per cent wanted it, and the fact that the Independent Union had a strong odor in my opinion. That is why I joined it.

Q. (By Mr. Clark.) Do you remember Mr. Burke being at the meeting of April 18th?

1555 A. I believe he was called.

Q. The meeting was in progress, and someone sent for him?

A. I think that is correct.

Q. Can you tell us what, if anything, he said after he got there?

A. It was something important at the time. I believe that the question was asked, if it was already an independent union, or if it was to get members, or if they were going to start it, and I see that Mr. Greget, in mistake said, or at least

he thought it was already, I believe he did say "The Independent Union is," and that we were members, but I think Mr. Burke cleared it up when he came there, I think Mr. Burke cleared it up and said there were some things, it had to be registered, or something like that.

Q. Mr. Burke said there wasn't any organization?

A. I believe he did.

Q. That was your impression?

A. That was my impression.

Q. Did you stay for all of that meeting on the 18th?

A. I couldn't say. The gang marched out.

Q. Had the meeting adjourned, as far as you know?

A. I don't know as it was adjourned.

Q. You don't know of any definite action that was taken at that meeting?

A. I don't believe there was.

1556 Q. There seemed to be a lot of hub-bub, as someone described it, everyone talking at once?

A. Just at the end; I wouldn't say so much that Mr. Greget couldn't give the proper answer when he was asked. They listened pretty good.

Q. I didn't have that in mind, Mr. Landry.

A. I answer you, though.

Q. I know you thought I had that in mind, but I didn't. The meeting adjourned without taking any definite action, anyway?

A. I believe I would say so.

Mr. Clark: That is all.

Trial Examiner Batten: Mr. Goldberg, have you any questions?

Mr. Goldberg: I have no questions.

Redirect Examination.

Q. (By Mr. Rissman.) Mr. Landry, Mr. Lamfrom has questioned you rather exhaustively on the number of conferences you had with me about this case, do you recall?

A. I believe he did.

Q. Were there other people present at those meetings?

A. Yes.

Q. The other officers and members of your union, some of them?

A. Yes.

1557 Trial Examiner Batten: Mr. Rissman, I don't think it is necessary to question on that, because, after all, I

think any lawyer that does not interview his clients before he tries a lawsuit had better go back to school, or some place.

Mr. Rissman: I would be ashamed to stand here if the witness said he had not been interviewed.

Q. (By Mr. Rissman.) Who were the foremen and assistant superintendents you testified you saw at the North Avenue meeting, Mr. Landry?

A. If I recollect correctly, I believe Mr. Carl Stenn was there, and I believe a man that I know was Pat Feely, and another one as Mr. McAndrew were there; and I recall him because of the fact I didn't know him personally, but, while walking out amongst the men, he started telling me I should get up there and conduct the meeting, and that I knew more about it than whoever it was, and he said, "I should say nothing. You know, I am a boss, I have charge of about ten men over there."

Q. In connection with this business of who recommended the attorney, let me ask you, Mr. Landry, at that North Avenue meeting, or shortly after you knew that Mr. Falk had suggested Mr. Burke as an attorney, did you think it proper for the company to suggest an attorney, and for that fact to be concealed from the employees?

A. I did not.

1558 Mr. Clark: I submit that is immaterial.

Trial Examiner Batten: Of course, I don't know, but I think Mr. Landry has been asked a lot of questions about his personal opinion. You answer the question.

A. I didn't think it was right, no.

Q. (By Mr. Rissman.) You have testified in response to Mr. Lamfrom's question that during the existence of the Works Council, there was no labor trouble, or no labor disturbance in the plant, is that right? Wasn't that your testimony?

A. I believe I did, yes.

Q. Was there ever any labor trouble or labor disturbance at the plant before the Works Council, all the time that you were employed there?

A. While I was employed?

Q. While you were employed.

A. Well, now, I don't know if that was before. I believe it was the same time, they both went together, I believe, that the Federation of Labor made their drive there for membership.

Q. Was there any disturbance, or any interruption of work

at the plant during all the time you were employed there before the Works Council was organized?

A. I don't remember.

Q. Was there ever any strike or disturbance?

A. Not while I was employed there.

1559. Q. So that the fact as to whether or not there was any labor trouble or labor disturbance before the Works Council was the same as it was during the existence of the Works Council?

A. I think so.

Q. You have mentioned here that one of the chairmen of the North Avenue meeting, a man who acted as chairman for a while, was Mr. Bryce?

A. Norman Bryce.

Q. Who is he?

A. I always regarded him as being a management official, although that has been denied. I don't personally know his position with regard to the company.

Q. Do you know whether other employees in the plant regard Mr. Bryce as being a management official?

A. Well, there was so much doubt about it, that I naturally say that those who were in doubt didn't know whether he was or not.

Q. Did you ever discuss with any other employee the question as to whether Mr. Bryce was a management official?

A. Yes, I have.

Q. You have testified that you had something to do with application cards of the Independent Union.

A. Yes.

Q. I hand you herewith Board's Exhibit 32 for identification, and ask you if that is one of the application cards of the Independent Union.

A. Yes, sir.

Mr. Rissman: I offer BOARD'S EXHIBIT NO. 32 in evidence.

Mr. Engelhard: May I see it?

Mr. Rissman: Yes.

Trial Examiner Batten: If there is no objection, it will be received.

Mr. Engelhard: The only point I wish to make is, on the face of that, it does not appear to be an application blank of any named organization but an organization to be formed in the future.

Trial Examiner Batten: Do you object to it on that ground?

Mr. Engelhard: No, I do not object to it. I merely state the record might so show.

Trial Examiner Batten: Well, I presume the exhibit will show. It will be a part of the record, Mr. Engelhard.

Mr. Engelhard: In connection with the exhibit, I make that statement for the record.

Trial Examiner Batten: I presume this is the application card referred to, that was used prior to the time the Independent Association was actually organized.

Q. (By Trial Examiner Batten.) Is that right, Mr. Landry?

1561 A. Yes, sir.

Q. And this is the kind of an application card which you were requested to take out into the plant and have signed?

A. That is correct.

Mr. Rissman: That is all.

(Whereupon, the document above referred to, marked BOARD'S EXHIBIT NO. 32, was received in evidence.)

Recross Examination.

Q. (By Mr. Engelhard.) You felt perfectly free to join the C. I. O.?

Mr. Rissman: May I have that question read?

(The question was read.)

A. Surely.

Q. (By Mr. Engelhard.) You have never been influenced by any action taken by any officer of the company about joining or not joining the union?

A. It didn't influence me. I had quite a few talks with them.

Q. I am just asking you whether you were influenced.

A. It wouldn't influence me, no.

Q. One way or the other?

A. No, sir.

Q. You are a man of your own mind?

A. I try to be.

1562 Q. You were not intimidated by anybody about joining any union, or refraining from joining any union?

A. Intimidated? Well, naturally, if it didn't scare me what they said, I wasn't intimidated, no.

Q. Then you were not intimidated, and you don't claim you were ever coerced in doing anything, or refraining from doing anything?

A. They may have attempted it. It didn't work.

Q. Whatever was done by anybody belonging to the management of the corporation had no influence upon you whatsoever?

A. No, it didn't have much.

Q. What is that?

A. It didn't have much influence.

Q. Did it have any influence upon you?

A. Yes. The influence or thought remained in the back of my mind that, regardless if I am outspoken, and do what I want, and that they guarantee it has no bearing on what union I joined, that I may take a drink out of the wrong bubbler some day.

Q. The point is, you have exercised your freedom of choice?

A. I have.

Q. You have openly proclaimed it.

A. I have, yes.

Q. You have never made any attempt to conceal the fact you were a member of any union?

1563 A. It would be useless.

Q. That is the point I am getting at.

Mr. Rissman: What point?

Mr. Engelhard: You say what point, Mr. Rissman?

Mr. Rissman: Yes, sir.

Q. (By Mr. Engelhard.) Namely, that you have exercised your freedom of choice?

A. I certainly have tried to.

Trial Examiner Batten: Is that all, Mr. Engelhard?

Mr. Engelhard: That is all.

Redirect Examination.

Q. (By Mr. Rissman.) Did you have any specific event in mind when you said you might take a drink out of the wrong bubbler some day?

A. Absolutely.

Q. What?

A. It is common knowledge in the shop—

Q. Just tell us what you had in mind.

A. The fact because I belonged to the C. I. O., and was one of its officers, and spoke freely my own thoughts and opinions about management and officials and such, and they freely expressed their disregard or indifference to my opin-

ion, that regardless of how often they told me it didn't make any difference what button I wore, that if I slipped here or there, they are watching me, I would be looking for another job.

Mr. Engelhard: Just a minute.

Q. (By Mr. Engelhard.) Did you say you know of any fact that warrants that answer?

A. I don't think I said that.

Trial Examiner Batten: Just a minute, Mr. Engelhard, until he finishes. You may have your turn again, and then I presume, if any of the other attorneys desire a turn, they may take their turn.

Will you proceed, Mr. Rissman.

Q. (By Mr. Rissman.) What events at the factory that you knew of or had heard about led you to say now that if you took a drink out of the wrong bubbler, it might be too bad for you?

A. That is the way we usually refer to it in the shop, but I could point it out as being the case when Mr. Oristo went to the powerhouse, when he should have drunk right next to his machine, something like that.

Mr. Rissman: That is all.

Recross Examination.

Q. (By Mr. Engelhard.) That is Mr. Oristo's claim, is it not, Mr. Landry?

A. I was made aware of the fact at that time.

Q. I see, you were made aware of the fact through somebody who claimed to be aware of the fact?

1565 A. It is common talk around the shop, to drink out of the wrong bubbler, that is a common expression.

Q. When I interrupted Mr. Rissman, which I should not have done, I asked you whether or not you are aware of any fact, I mean, of any fact directed against you, since you have become a member of the C. I. O., that your job is any less secure today than it was at any time you worked in the plant?

A. Any fact, did you say?

Q. Yes, do you know of any fact, anything, any matter, any event directed toward you by anybody connected with the management?

A. Oh.

Q. That in any way indicates that your job is less secure

today than it was at any other time since you were working there?

A. You didn't have the words "connected with the management" in there the first time you stated it.

Q. That is what I am asking you.

A. I couldn't say that any of them—I don't believe any of them did openly.

Q. I am asking you whether you know of any fact, thing or matter on the part of anybody belonging to the management, that makes you feel less secure about your job today than at any other time since you worked there?

A. The fact that Mr. Harold Falk told me recently 1566 that if the C. I. O. pulls a strike in our shop, and keeps it shut for one week, he will lock the door and throw the key away, I guess my job isn't secure any more there, it is gone with the rest, isn't it?

Q. That isn't anything directed against you personally, is it?

A. That influenced me.

Q. I am asking you about anything that makes you, as an individual, feel less secure, by reason of any act or anything that has been told you, outside of that remark?

A. More so—no. I will answer your question no.

Q. That is what I wanted you to answer.

A. You have got it.

Mr. Engelhard: If you so felt like it. That is all.

Trial Examiner Batten: Mr. Goldberg?

Mr. Goldberg: I have nothing.

Trial Examiner Batten: Mr. Clark?

Mr. Clark: Nothing.

The Witness: Am I through?

Trial Examiner Batten: Apparently that is all.

The Witness: Thank the Lord.

(Witness excused.)

Trial Examiner Batten: I believe we will recess for a few minutes.

(A short recess was taken.)

1567 Trial Examiner Batten: I believe we are ready to proceed, gentlemen.

Mr. Rissman: If the Examiner pleases, I am calling Mr. Kingsland at this time. It breaks the continuity of it, but he has to get away, and I thought we would get his testimony at this time.

1568 PHIL J. KINGSLAND, a witness called for and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Rissman.) Will you state your name, please?

A. Phil J. Kingsland.

Q. (By Trial Examiner Batten.) How do you spell the last name, Mr. Kingsland?

A. K-i-n-g-s-l-a-n-d.

Q. (By Mr. Rissman.) And where do you reside, Mr. Kingsland?

A. 529 North Thirteenth Street, Apartment 310.

Q. Milwaukee, Wisconsin?

A. Milwaukee, Wisconsin.

Q. What is your business or occupation?

A. Business representative of the Operating Engineers, No. 312.

Q. That is the local union that has intervened in this case?

A. It is.

Q. What is the jurisdiction of your union, as far as men are concerned?

A. The operation of all steam or motor-power plants in the generation of power, also refrigeration and air-conditioning.

1569 Q. Are there employees employed by The Falk Corporation who are eligible for membership in your union?

A. There is.—

Q. Do you know how many employees there are?

A. I was informed that there were seventeen in all?

Q. By whom were you informed?

A. By the men themselves.

Q. These are men who are generally classified as powerhouse employees?

A. Yes.

Q. Among your duties as a representative of the International Union of Operating Engineers is the organization of the unorganized?

A. It is.

Q. And do you organize any of the employees of The Falk Corporation?

A. I did.

Q. Have you solicited them for membership in your union?

A. Not directly. I had men doing it for me.

Q. Was it done under your supervision?

A. It was.

Q. Do you know, and can you tell us, how many employees of the seventeen indicated that they would join your union?

Trial Examiner Batten: Mr. Rissman, I wonder if 1570 you would mind having him place the date this first started?

Q. (By Mr. Rissman.) Will you do that, Mr. Kingsland? When did you first start an organizing campaign with the Falk employees?

A. In February, 1937.

Q. And it was in connection with that campaign that your men under you organized some of the employees?

A. Yes.

Q. How many of them did you organize?

A. Fourteen in all.

Q. And how was their intention made known to the union?

A. Several of the men came up to the office.

Q. Did these fourteen men sign application cards?

A. They did.

Q. I hand you herewith Board's Exhibit No. 33 for identification, and ask you if that is the type of application card signed by the men?

A. It is.

Mr. Rissman: I offer BOARD'S EXHIBIT NO. 33 in evidence.

Mr. Lamfrom: Let's see it, just as a matter of information. I think I have seen them.

Trial Examiner Batten: There is no objection?

Mr. Lamfrom: No objection.

Trial Examiner Batten: If there is no objection, it 1571 will be received.

(Thereupon, the document above referred to, marked BOARD'S EXHIBIT NO. 33, was received in evidence.)

Q. (By Mr. Rissman.) Do you know if any of those men who signed application cards paid any fee to the union?

A. They all did.

Q. What fee did they pay?

A. From one to five or ten dollars. They never paid the full initiation fee.

Q. That was part in payment of their initiation fee?

A. It was.

Q. After the men had signed these application cards and paid part of their fees, did you confer with any representative of The Falk Organization?

A. I did.

Q. When did you do that, approximately?

A. It was in April, approximately April 12th.

Q. 1937?

A. 1937.

Q. With whom did you confer?

A. Mr. Harold Falk.

Q. Will you relate to us the conversation had between you and Mr. Falk?

A. Yes. I did not call Mr. Falk for an appointment.

1572 Q. Was there any reason for not calling?

A. There was.

Q. What was that reason?

A. I had been informed by the men employed in the power plant that it would be useless to call for an appointment, that after he knew who I was, he would either be too busy to see me, or out of the city.

Q. Now, tell us about your appointment with him, and what conversation was had between you.

A. So I went out to see Mr. Falk, it was on a Monday, I think, about April 12th, introduced myself, told him who I was, told him that I would like to be recognized as a representative of the union, and have him to recognize the union as the bargaining agent for these men.

Q. What did he say?

A. The impression given me—

Q. Just a minute. What did he say?

A. I can't recollect the exact words.

Q. In substance?

Q. (By Trial Examiner Batten.) You can tell us in substance what he said.

A. That he saw no reason why he should not recognize us, but he wanted to confer with the men first. He asked me to submit a list of the names of the men to him, but, upon legal advice later—

1573 Q. (By Mr. Rissman.) Just tell us about the conversation, what did you say to him when he asked you for a list of the names?

A. I told him I would.

Q. Did you tell him at that time, or during that conversation, how many men had signed applications for membership in your union?

A. I did.

Q. You told him there were fourteen?

A. Fourteen out of the seventeen.

Q. Did he indicate that he doubted that statement, or did he say anything to indicate that he doubted your statement?

Mr. Lamfrom: Just a minute. I submit counsel may ask the witness what he said, to relate the conversation, but not "did he or did he not say this?"

Q. (By Trial Examiner Batten.) You may proceed, Mr. Kingsland, just tell us what you said and what Mr. Falk said during this conference.

A. Well, he said he was willing to recognize our union as the bargaining agent for the men, but that he wanted to see and talk with the men first.

Q. (By Mr. Rissman.) Did he say anything, or question you in any manner whatsoever as to whether you did represent the fourteen men you said signed application cards?

A. No, only to the extent of wanting to see the men 1574 first, to get their word from them.

Q. And he asked you to submit a list of the men?

A. He did.

Q. Did you submit such a list?

A. No, I didn't.

Q. Did you have any reason for not submitting such a list?

A. Yes, upon advice from our attorney.

Q. Following the interview you have just related with Mr. Falk was there any meeting of the members of your union, of the Falk plant?

A. No, there was not.

Q. Was there any meeting scheduled for them?

A. There was.

Q. Were they notified of such a meeting?

A. They were.

Q. And how many attended?

A. None.

Q. Subsequent to your interview with Mr. Falk, can you tell us what occurred to indicate that some of the men had severed their connection with your union?

A. Yes.

Q. What happened?

A. I received five letters in the mail, about May 6th, from five different power plant employees at The Falk Corporation, asking that the fee they had already paid on their 1575 application be returned, that they did not want our union to represent them.

Q. I hand you herewith Board's Exhibit No. 34, for identification, and Board's Exhibit No. 35, for identification, and ask you if this isn't one of the letters you received?

A. It is.

Q. Exhibit No. 34 being the letter, and Exhibit No. 35 the envelope addressed to you?

A. It is.

Q. And this letter is addressed to your union, dated May 4, 1937, and states:

"Gentlemen:

"The undersigned employee of The Falk Corporation herewith withdraws the applications signed by him for membership in the Milwaukee Operating Engineers Local No. 311, and asks that the fee paid by him be returned.

"Very truly yours."

And that is signed by John—

A. Yunkovich.

Q. (Continuing) —Yunkovich, address 605-A South Sixty-First Street, Milwaukee.

Were the other letters different from this one, or the same?

A. Exactly the same.

Q. Were all of the letters typewritten?

1576 A. They were.

Q. And they all had the return address of the employee stamped on them?

A. All but one.

Q. All but one. Do you recall which one came without the return address?

A. I beg your pardon. All the letters had the return address. It was the envelope, all but one envelope had the return address.

Q. And do you recall whose envelope did not have a return address?

A. No, I don't.

Mr. Rissman: It so appears that the letter and envelope introduced in evidence do not compare. I will ask leave to

withdraw Board's Exhibit 34 and Board's Exhibit 35, being the letter of Yunkovich, and introduce a similar letter received from Laurence G. Frank, and the accompanying envelope, if there are no objections.

Q. (By Mr. Rissman) Is this the same as the other letter I showed to you?

A. It is.

Q. It contains the same information?

A. Exactly.

Q. Except for the signature and the address of the employee?

1577 A. Yes.

Q. This envelope indicates that it was sent by Laurence G. Frank, with his address?

A. Yes.

Q. And it is addressed to your union?

A. It is.

Q. Did you make any comparison of the stationery and the typing and envelopes of these three letters?

A. I did.

Q. What did you find?

A. I found them to be exactly the same, as far as I could see.

Mr. Engelhard: Can't we shorten this by clearing up, for the purpose of the record, how those letters came out? I understood Mr. Clark said they were sent from his office.

Trial Examiner Batten: As soon as we are through with this, we perhaps can.

Mr. Engelhard: Perhaps we can save some time. We may be able to stipulate to it.

Trial Examiner Batten: Are these the letters you referred to, Mr. Clark?

Mr. Clark: Yes. I have a copy of a letter prepared in our office, dated May 4, 1937, addressed to Milwaukee Operating Engineers, Local No. 311; American Federation of Labor, 2401 West Wisconsin Avenue, Milwaukee, Wisconsin:

1578 (Reading):

"Gentlemen:

"The undersigned employee of The Falk Corporation hereby withdraws the application signed by him for membership in the Milwaukee Operating Engineers, Local No. 311, and asks that the fee paid by him be returned.

"Very truly yours."

Trial Examiner Batten: That letter was sent out of your office?

Mr. Clark: Out of our office.

Trial Examiner Batten: To how many men, Mr. Clark?

Mr. Clark: I have a notation that this letter was sent to the above by mail:

M. P. Gaherty,

Laurence G. Frank,

Carl Herzenroeder, and

George J. Achterberg.

Mr. Rissman: You have three?

Mr. Clark: No, I have four.

Mr. Rissman: I offer Board's Exhibits 34 and 35 in evidence.

Trial Examiner Batten: If there is no objection, they will be received.

(Thereupon, the documents above referred to, marked BOARD'S EXHIBITS NOS. 34 and 35, were received in evidence.)

1579 Q. (By Mr. Rissman) Did you ever speak to any of these employees, who had signed application cards in your union, as to the reason for their withdrawal?

A. No, I did not.

Q. Was it ever reported to you why they withdrew?

A. Yes.

Q. By whom?

A. By other employees of the power plant department of Falk.

Q. What did these other employees tell you?

A. That they believed that the reason these men wanted to withdraw was that Mr. Falk had talked to them, and they had become frightened.

Mr. Engelhard: I submit, your Honor, that is pure hearsay.

The Witness: Yes.

Mr. Engelhard: I don't see how we can be bound by a hearsay statement of that sort. It is objected to.

Trial Examiner Batten: Of course, the question and answer will be received. As to whether or not that is binding on the respondent is a different question.

Mr. Engelhard: Let me ask if the Trial Examiner requires us now to bring in these men to see whether they made such a statement? That is where it is difficult for us.

1580 Mr. Lamfrom: The difficulty is in determining the situation, on our part, whether we have to meet this hearsay and re-hearsay.

Trial Examiner Batten: I have just said this statement, standing alone, as it is, is in no way binding on the respondent.

Mr. Lamfrom: That ought to be sufficient.

Trial Examiner Batten: Unless this statement, in other words, is substantiated or corroborated in some other manner, which shows a relationship between it and the respondent, as I just said, the respondent, of course, cannot be bound by such testimony as this. That is obvious.

Does that answer your question?

Mr. Engelhard: That answers my question perfectly. Then I don't have to worry about bringing these men in.

Trial Examiner Batten: Well, I think my statement answered your question, by stating that such evidence as this, the respondent is not bound by. I think that is clear, isn't it?

Mr. Engelhard: That is, cannot be used against the respondent, is that what you mean?

Trial Examiner Batten: Why certainly, unless it is corroborated or substantiated in some other manner. Such evidence as this is permissible for whatever value it has, but the respondent, of course, cannot be bound by such evidence. That is obvious, at least it is to me.

Mr. Lamfrom: It would be clear to me, Mr. Examiner, that that statement of yours would be correct but for the provision in Section 10 (B) of the Wagner Act, in which it is stated:

"In any such proceeding", referring to the type of proceeding that we are now engaged in, "the rules of evidence prevailing in courts of law or equity shall not be controlling."

Now, suppose that a finding should be made by the Labor Board upon this evidence—I am merely offering this as supposition, to clarify the query that we have in our minds—upon this evidence, that there had been interference with the right of the men in the power house to organize or to continue to be members of the organization, and we get up before the Circuit Court of Appeals on that record, and we argue that that is not evidence which would sustain that kind of a finding because it is hearsay, and for such other sufficient reasons as would be controlling in an ordinary action or proceeding in a court of law or a court of equity. But the court says to us, "Well, we are sorry. The Wagner law"—now quoting what I say the court might say, "The Wagner law says that in any such proceeding, the rules of evidence prevailing in courts

of law are not controlling, and naturally"—I am continuing with what the court might say—"Congress has the right to make rules for such procedure, or evidence," what are we to say?

Trial Examiner Batten: I think you have overlooked one other rule that the Board has, and that is, that unless the findings are supported by evidence.

Mr. Lamfrom: By evidence?

Trial Examiner Batten: Are supported by the evidence. And as I just said, if a finding were made on this statement alone, with absolutely nothing else in the record to substantiate it or corroborate it, why, Mr. Lamfrom, there isn't any question in your mind that the Circuit Court wouldn't give it a second thought, and neither would the Labor Board.

Mr. Lamfrom: I certainly would think that the Labor Board would not give it a second thought, and I certainly feel that the Circuit Court of Appeals wouldn't.

At the same time, both the Labor Board and the Circuit Court of Appeals are bound by that provision of the Wagner law.

Trial Examiner Batten: But they are also bound by the fact that the findings must be supported by evidence.

Mr. Lamfrom: By evidence?

Trial Examiner Batten: By evidence.

Mr. Lamfrom: By evidence. This is a point that I would like to clear up in my own mind. I am not making these statements for any other purpose.

Trial Examiner Batten: No, I understand.

Mr. Lamfrom: Does it mean by "evidence", evidence of the same type and character that would sustain a finding, for instance, of the Federal Trade Commission?

Trial Examiner Batten: Of course, it would be difficult for me to answer that question, because, after all, I am not the court, neither am I the Labor Board.

Mr. Lamfrom: Of course, this question is one I am just asking to bring out the point.

Trial Examiner Batten: My only reply was that evidence of this type is received for whatever value it may have; but of course, this type of evidence would not be binding upon the respondent, that is obvious, that statement.

Now, as to any further statement, it is impossible for me to make any ruling, or say what the Circuit Court may do.

Mr. Lamfrom: Oh, I know that.

Trial Examiner Batten: Or what the National Labor Board may do.

Mr. Lamfrom: Furthermore, we may never get there. This is just supposititious.

Mr. Engelhard: May I make a statement?

Trial Examiner Batten: Yes.

Mr. Engelhard: You see, just in order to protect the 1584 record, and I have had this experience—

Mr. Rissman: Is this going into the record?

Trial Examiner Batten: Are you putting all this into the record? Do you want it in the record?

Mr. Engelhard: I think this should go in, because this is the first opportunity we have had to make a record of what the reasoning is.

Now, the law says here: "And the finding of the Board as to facts, if supported by evidence, shall in like manner be conclusive." Now, that is on the court. We don't know what the court would consider legal evidence in support of findings, what it considers by "evidence", but of course, it means legal evidence.

Trial Examiner Batten: You say it means legal evidence?

Mr. Engelhard: It must be legal evidence.

Trial Examiner Batten: Of course, I am not saying what it means, because I—

Mr. Engelhard: Well, I assume that the court would never permit illegal evidence.

Trial Examiner Batten: I presume it means the kind of evidence which is permissible under the National Labor Relations Act.

Mr. Engelhard: I assume so. Now, if we were to come before the court with a record showing that we made no 1585 objections to hearsay testimony, we certainly would be bound by that record.

Trial Examiner Batten: Are you being denied the privilege of objecting to it?

Mr. Engelhard: No. That is the reason why I indicated my objection was for the record.

Trial Examiner Batten: You made your objection, and I think I overruled it, stating it would be received for a certain purpose. Now, the record is made.

What is the purpose of this discussion?

Mr. Engelhard: Merely to indicate that we are not making the objection to be obstreperous.

Mr. Rissman: That has not been claimed.

Trial Examiner Batten: I don't know as we need to continue it any further, then, because there is absolutely no

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thought in the mind of the Examiner that would be the purpose of you gentlemen making an objection.

Mr. Engelhard: I had this additional point in mind, Mr. Examiner. You made the statement that, standing alone, this evidence would not bind the respondent.

Trial Examiner Batten: That is correct.

Mr. Engelhard: You said, in effect, that unless there was something to corroborate it or substantiate it—

Trial Examiner Batten: That is correct.

Mr. Engelhard: (Continuing.) —it would not bind 1586 the respondent. Now, query: Whether, if this case does get into the Circuit Court of Appeals, the Circuit Court of Appeals, under this provision of the Wagner Act, will take this position. I don't expect you to answer that.

Trial Examiner Batten: I can't guarantee you what position the Circuit Court will take.

Mr. Engelhard: I understand that. But just bear in mind that we are now operating under this law, which has in it a provision that has no comparison, so far as I know, in American jurisprudence or statutes. It simply says here, again:

"In any such proceeding, the rules of evidence prevailing in courts of law or equity shall not be controlling," following the statement somewhere in the Act that if there is evidence to support the finding, it must be sustained. But it does not say—

Trial Examiner Batten: I presume it is worded in the same manner as any other law. I do not recall statutes with respect to evidence, codes or statutes, which, in detail, describe these various things. It is the result of practice, and the result of experience, and I presume that the Circuit Court of Appeals, having had that experience and training, would be in a position to determine whether or not this evi- 1587 dence, under the conditions which the Trial Examiner has admitted it, is in any way prejudicial to the respondent.

Now, it is quite impossible for me to see how it can in any way prejudice the respondent, when I have clearly stated that it is in no way binding upon the respondent.

Mr. Engelhard: I think you have made your position perfectly clear.

Trial Examiner Batten: Unless it is substantiated or corroborated by other direct testimony. And any finding based upon this statement alone, unsupported by any other evidence,

the Trial Examiner cannot see how it can be supported on any basis.

Mr. Lamfrom: I think that is all clear, your Honor.

Mr. Rissman: If I may say, if the Examiner please, in connection with the particular question and objection here, the question is more or less moot, because Mr. Harold Falk has testified that he did speak to the men, and the Board will draw its own conclusions as to whether or not his talking to the men in any way influenced them in resigning from this union.

Mr. Lamfrom: But that is just the evil of the situation.

Mr. Engelhard: You are trying to have this man testify as to what someone else told him occurred after Mr. Falk talked to him. Now, whose oath is supporting that?

1588 Mr. Kingsland merely testifies as to what somebody told him.

Trial Examiner Batten: There is no testimony here that the matter which Mr. Kingsland is testifying to occurred either before, after or during the time that Mr. Falk talked to these men, and, as far as I can see, so far there is no relationship between the two, between the statements of Mr. Falk, and this testimony.

Whether or not that appears later in the proceedings is another thing. I think the witness may continue to testify as to what he was told with respect to this matter.

(Question and answer read by the reporter.)

Q. (By Mr. Rissman.) Did you hear Mr. Falk testify—

Mr. Engelhard: Just a minute. I am going to renew the motion that that testimony be stricken, because it is hearsay.

Trial Examiner Batten: Now, Mr. Engelhard, there is absolutely no reason or sense in renewing a motion which you have made, and I have denied.

If all you want to do is build up a record, all right; but you made your motion, and I denied it. There is no justification for renewing it.

Mr. Engelhard: I don't know whether my motion was to strike. That is why I just renewed it.

1589 Mr. Lamfrom: This is not, at least in this jurisdiction, Mr. Examiner, not an uncommon proceeding, to object to the question, and if there is a ruling on that question adverse to the objector, and the question is answered, the point can be raised again by a motion to strike. That is the purpose of this.

We know your ruling will be the same, at least we pre-

sume so; but it does show that we have exhausted every effort reasonably possible to accomplish our object. It is done most respectfully.

Trial Examiner Batten: Will you read that last motion, please?

(Record read by the reporter.)

Trial Examiner Batten: What was the previous testimony?

Mr. Engelhard: I think I merely objected to his testimony.

Trial Examiner Batten: Then it is not a renewal. It is a motion.

Mr. Engelhard: No. That introductory remark is probably merely talk; but the motion is to strike.

Trial Examiner Batten: Well, I presumed you made the motion to strike when you said you would renew the motion. My remark was directed to the renewal of the motion previously made.

Mr. Lamfrom: This is in a different form.

Trial Examiner Batten: If this is a different motion, 1590 as Mr. Lamfrom says, to strike, I will deny the motion.

Q. (By Mr. Rissman.) Mr. Kingsland, did you hear Mr. Falk testify that he spoke to the employees in the power house after his interview with you?

A. I did.

Q. Can you tell us, in your experience as a representative of a labor organization, what effect you think that would have upon employees?

Mr. Lamfrom: Objected to as incompetent, irrelevant and immaterial, and distinctly calling for a speculative conclusion.

Trial Examiner Batten: I will sustain the objection.

Q. (By Mr. Rissman.) Can you tell us, Mr. Kingsland, whether or not the fact an employer speaks to his employees about their membership in a labor organization does or does not influence the employees?

Mr. Lamfrom: Objected to, for the same reasons.

Trial Examiner Batten: Same ruling.

Q. (By Mr. Rissman.) How long have you been a representative of labor organizations?

A. One year.

Q. And during that time, have you had experience with dealings with employers?

A. A great many of them.

Q. And with members or persons who sought membership in your union?

A. Yes, I have.

Q. Can you tell us how many employers there are in this vicinity with whom you have labor agreements?

Mr. Lamfrom: That is objected to as being incompetent, irrelevant and immaterial. I don't think we are concerned with that here.

Trial Examiner Batten: I presume you are asking these questions for the purpose of qualification as an expert?

Mr. Rissman: I am.

Mr. Lamfrom: An expert on what? Human emotions?

Trial Examiner Batten: An expert on labor matters?

Mr. Rissman: Yes, sir.

Trial Examiner Batten: You may proceed.

Q. (By Mr. Rissman.) Do you recall the last question?

A. I do.

Q. Will you answer it?

A. I would say between 225 to 250 employers.

Q. And you have daily transactions with various employers regarding labor matters?

A. I do.

Q. What was the most recent labor matter in which you were engaged prior to coming to this hearing? Tell us when. I am not interested in parties.

A. Yesterday.

1592 Q. I ask you, Mr. Kingsland, as a result of your experience in these various labor matters, whether you have any opinion as to whether or not the fact that an employer talks to his employees about a labor union would create any impression or influence upon those employees?

Mr. Lamfrom: That is objected to,—

The Witness: I have.

Mr. Lamfrom: (Continuing.) —as incompetent, irrelevant and immaterial; and for the further reason that in the form of a hypothetical question, it does not assume certain facts which are in accordance with the evidence.

Trial Examiner Batten: He may answer the question "yes" or "no."

The Witness: Yes.

Trial Examiner Batten: Whether he has an opinion.

Mr. Lamfrom: I guess that's all right.

Q. (By Mr. Rissman.) Have you any opinion as to whether or not the fact, as Mr. Falk testified here, that he spoke to these employees in the power house, had any impression or influence upon those employees?

Mr. Lamfrom: That is objected to.

The Witness: I have.

Mr. Lamfrom: Just a minute. That is along the same line.

Trial Examiner Batten: The question calls for an answer of "yes" or "no," whether he has an opinion.

Mr. Lamfrom: Yes.

Mr. Rissman: On these facts.

Mr. Lamfrom: He answered it "yes."

Q. (By Mr. Rissman.) What is that opinion?

Mr. Lamfrom: That is objected to as incompetent, irrelevant and immaterial; and for the further reason that it is a hypothetical question not containing all the facts upon which the hypothesis is based.

Mr. Rissman: The facts are part of the record.

Trial Examiner Batten: As I understand the question, the question is, whether or not as a result of these men's withdrawal from the union, whether or not he has an opinion as to whether or not this talk had any influence on them.

Mr. Rissman: That's right, whether or not the fact that Mr. Falk spoke to them had any influence upon the employees.

Trial Examiner Batten: Of course, I think the way the evidence stands at the present time, there is no showing here that he has ever had any conversation with any of these men who withdrew their applications.

Mr. Rissman: I am asking for his opinion, based upon the facts as brought out here, and I will add to the question:

Q. (By Mr. Rissman.) In addition to Mr. Falk's statement, the letter sent out by the company, which has been received as an exhibit here, addressed to the power house employees.

Mr. Lamfrom: Just a minute. The letter sent out by whom?

Mr. Rissman: By the company.

Mr. Lamfrom: The company didn't send those letters out. What are you misquoting the thing for?

Trial Examiner Batten: You mean what?

Mr. Rissman: I mean the letter where Mr. Falk says, No. 1, "I do not favor labor unions."

Trial Examiner Batten: You are referring to what exhibit? What is that?

Mr. Lamfrom: Board's Exhibit No. 18, addressed to the employees in the power house.

Trial Examiner Batten: I think, Mr. Kingsland, you may answer that question, based on the fact of that letter, and the withdrawal of these men from the organization, and the facts as they have been stated here, you may express an opinion as to whether or not that would influence the men.

Mr. Lamfrom: I do not object to that last question, but I want to have it understood that we object to the question as amended by counsel, for the same reasons we objected to the question before.

Trial Examiner Batten: You mean, since this exhibit has been introduced?

1595 Mr. Lamfrom: And the additional facts that he gave the witness in this last question. You see, he framed a question, then he added some facts to it. To the first question, we objected. We are now objecting to the second question for the same reasons.

Trial Examiner Batten: Let me phrase the question, will you, Mr. Rissman, please, on this matter?

Mr. Rissman: Sure.

Q. (By Trial Examiner Batten.) Mr. Kingsland, as I understand, there are facts here to show that on April 16th, Board's Exhibit 18, the Falk Corporation sent out a notice to the employees in the power house which stated:

* "We are not in favor of a union. We do not care to recognize Mr. Kingsland as the bargaining agent for you unless you, as a group, signify your desire to have us do so. We are ready at all times to meet with you as a group or individually and discuss your problems."

The facts further show that Mr. Falk did discuss this matter individually with many of the men. The facts also show that there were fourteen men who had signed applications to join the International Operating Engineers; that sometime thereafter, you received notice of the withdrawal of a number of these men.

Now, taking those facts, in your experience as a labor
1596 man, is it your opinion that the letter of April 16th, Board's Exhibit 18, and Mr. Falk's talk with these men concerning their union affiliation, would or would not have any effect on their remaining in the organization?

Mr. Lamfrom: Before you answer, we object to that question, on the ground it is incompetent, irrelevant and immaterial; and for the further reason that the hypothetical question, if it is a hypothetical question, does not contain all of the facts in the case, much of which is discussed in Mr. Falk's testimony itself.

Trial Examiner Batten: I will be glad, Mr. Lamfrom, to have you add any other facts to that which you recall, that I have not included.

Mr. Lamfrom: If I may have a minute to go over that testimony?

Trial Examiner Batten: Yes. We will recess for a few minutes.

(A short recess was thereupon taken.)

Mr. Rissman: If the Examiner please, because I feel that the facts themselves will be presented in the record, in addition to those facts that are in the record, and the answer, if an answer can be had to the question now pending, is entirely not necessary to my case, or the case of the International Union of Operating Engineers, I will withdraw the last question.

1597 Q. (By Mr. Rissman.) Mr. Kingsland, when did you first receive any withdrawal of application cards from your union by any of the Falk employees?

A. It was May 5th or May 6th, 1937.

Q. Prior to that time, had any employee ever withdrawn from membership of the union, any Falk employee?

A. None.

Q. Prior to that time, had the Falk employees been attending union meetings?

A. They had.

Q. Prior to May 5th or May 6th, did any employees of the Falk Company say to you that they did not desire to be members of your union?

A. No.

Q. You are talking, now, about those who already signed their cards, and paid part of their initiation fee?

A. I am.

Q. Do you know if, prior to the meeting of April 18th, 1937, or the meeting called to be scheduled on that date, the employees indicated to you that they did not wish to be represented by your union?

A. They did not.

Q. What was the first indication you had that these fourteen men, who had signed application cards in your organization, were not interested in your union?

1598 A. When I received the letters of May 5th or 6th.

Q. Do you know what, if anything, occurred that resulted in the non-attendance of these men at the meeting of April 18th?

A. Yes.

Q. What?

A. The men, after I had had the meeting with Mr. Falk on Sunday, April 12th, these men were talked to by Mr. Falk, and then following that, April 16th, Friday of the same week, a letter was posted in the power plant, and the meeting that we wanted held was for Sunday, April 18th, and no one showed up at that meeting.

Q. Now, since April 18th, have you seen any of these men, have they come around to you, any of those who have sent in their withdrawals?

A. Not to me personally, there are none that I know of.

Q. Since May 5th or 6th, when you received these letters, have any of these men come around to the union, or to you, that you know of?

A. The men whom I received these letters from?

Q. The men who withdrew.

A. No, they have not.

Q. Or any of the other men who signed application cards?

A. Yes, two of them are now members.

Q. And only two of the original fourteen have indicated any interest in the union since that time?

A. Yes.

Q. I hand you herewith Board's Exhibit No. 36 for identification, and ask you if this isn't a list of the men who signed applications in Local Union No. 311, members of The Falk Corporation, with the date of the signing of their application appearing after each name?

A. It is, and the dates are correct, to the best of my knowledge.

Mr. Rissman: I offer Board's Exhibit 36 in evidence.

Mr. Lamfrom: We have not seen it.

Mr. Rissman: Do you want to see it?

Mr. Lamfrom: Yes.

Mr. Rissman: Any objection?

Mr. Lamfrom: No.

Trial Examiner Batten: There being no objection, it will be received.

Thereupon, the document above referred to, marked BOARD'S EXHIBIT NO. 36, was received in evidence.)

Q. (By Mr. Rissman.) Since April 12, 1937, have you had any conferences or meetings with Mr. Falk, or anybody representing the company?

A. Yes.

Q. With whom?

1600 A. In Mr. Lamfrom's office, with Mr. Lamfrom and Mr. Falk present, Mr. A. G. Goldberg; Mr. Vern Biesel, president of the union at that time; and myself.

Q. What conversation took place at that time?

A. Well, as to the reason why Mr. Falk would not recognize our right to bargain for these men, discussed the National Labor Relations Act to a certain extent, different points were brought out, and Mr. Falk, I understood at that time, seemed to be willing to recognize us as bargaining agents of the men.

Just what date that was, I can't recollect.

Q. Was it after May 5, 1937, after you received these letters of withdrawal? Or, I think you said May 6th.

A. I am not sure, I am not sure.

Q. Were you present this morning, Mr. Kingsland, when there was read into the record a stipulation entered into between your union and the Amalgamated Association of Iron, Steel and Tin Workers?

A. I was.

Q. And you have no objections to that stipulation?

A. I have none.

Mr. Rissman: That's all.

Cross-Examination.

Q. (By Mr. Engelhard.) At that conference in Mr. Lamfrom's office, didn't Mr. Falk say to you that he
1601 could not recognize your union because the Independent Union represented a majority of the employees?

A. I don't recall as to that, as to whether that statement was made.

Q. Did he say that he would recognize your union?

A. No, not definitely. We were led to believe so.

Q. What did he say that led you to believe that he would recognize Local 311?

A. Well, that he had no objection to a union, if the men preferred it, and the majority wanted it.

Q. Didn't he say that he had recognized the Independent Union because it represented a majority of the employees?

A. I don't remember.

Q. You don't remember that. Now, you stated before that these men attended union meetings prior to May 6th, but not thereafter, is that a correct statement?

A. Yes, prior to May 6th.

Q. Isn't it a fact that they didn't come to a meeting at all on April 18th?

A. That is true; then that should have been prior to April 18th.

Q. You stated that you know that the letter of April 16th was posted in the power house. How do you know that?

A. Some of the other men came into the office and told me about it.

1602 Q. The fact is, though, that the letters were mailed to them individually.

A. The letters, yes, those letters.

Q. The one posted in the power house?

A. Those letters—I beg your pardon, I should have said "bulletin", I believe it was a bulletin.

Q. You don't know how they got the letters, except from what has been told you?

A. Yes, true.

Q. I show you Board/s Exhibit 19, and ask you whether you saw a copy of that at any time?

A. Not until after—yes, I had seen copies of it.

Q. Will you read that to yourself? Does that speak the truth?

A. Yes.

Q. In your discussion with Mr. Falk, had you arrived at any agreement with him regarding wages?

Mr. Goldberg: If the Examiner please, there is nothing on that card that says anything about wages or any agreement of wages.

Mr. Engelhard: I am not asking whether there is anything on this card about wages. I am asking him whether, when he had his conference with Mr. Falk, any agreement had been arrived at as to wages, in the power plant.

Trial Examiner Batten: I think it is a proper question to ask him, whether in his meeting with Mr. Falk, any agreements were arrived at, or arrangements made.

Q. (By Mr. Engelhard.) As regards wages?

A. Not definitely.

Q. As regards seniority rights?

A. I believe Mr. Falk mentioned that as far as the seniority rights were concerned, the company had always recognized seniority rights.

Q. Did he enter into any agreement with you as to what seniority rights he would recognize?

A. No, he did not.
Q. What terms of any contract had you and he agreed upon when you left?

A. None, at the time.
Q. None at the time?
A. No contract agreed upon.
Q. I stated, "terms of a contract."

A. No terms.
Q. No terms whatever?
A. True.
Q. Then this statement in this card that, "Only the hours that you men wish to work remains to be settled", is not the fact, is it?

A. To a certain extent, yes.
Q. Now, Mr. Kingsland, you said you had not agreed 1604 on any terms of any contract with Mr. Falk when you left him?

A. No, we hadn't come to an agreement. We had discussed terms, though.

Q. You hadn't come to any agreement?
A. No.
Q. That the wages would be such-and-such?

A. No.
Q. That the hours would be such-and-such?

A. No.
Q. Or seniority rights would be such-and-such?
A. No.

Q. But still, this post card says: "Only the hours that you men wish to work remains to be settled." I am asking you whether or not that statement is a fact.

Mr. Goldberg: It is further qualified by the next sentence, I submit.

Trial Examiner Batten: I think the witness is qualified to explain what he meant by this card, and the terms on it.

Mr. Lamfrom: This is not his card, if the Examiner please.

Mr. Goldberg: If the Examiner please, the point I make here is the sentence in the card, "Only the hours that you men wish to work remains to be settled." "Other minor conditions that you wish to insert in the contract will be discussed at a meeting to be held Sunday morning, April 1605 18th, at our office."

In other words, the card indicates there is more than just only hours, even though that one sentence is put that way.

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Mr. Engelhard: I submit, Mr. Goldberg, that I am cross-examining this witness about this card, and I don't think it is proper for you to suggest anything in connection with this cross-examination. When I am through, if you want to correct any of his testimony by you asking him questions, well and good; but I think I have a right to test this.

I am not saying that he made this representation.

Q. (By Mr. Engelhard.) This card is not signed by you, is it?

A. It is not.

Q. It was someone else who drew up this card. I am asking you whether or not the gentleman who drew up that card stated the facts when he said, "Only the hours that you men wish to work remains to be settled."

Mr. Goldberg: If I may state my objection—

Trial Examiner Batten: Yes.

Mr. Goldberg (Continuing): —I say to pick out the sentence, in and of itself, when there is this qualifying sentence, is unfair to the party writing it.

Trial Examiner Batten: I think, Mr. Goldberg, the witness knows that the postal card contains more than 1606 these few words, and, knowing that fact, he is in a position to answer this question.

Mr. Goldberg: Why?

Mr. Engelhard: I am asking the witness.

Q. (By Mr. Engelhard.) You know what is on this card?

Mr. Rissman: Will you answer for the record, Mr. Kingsland? When you nod your head, it does not appear.

The Witness: A. The way that sentence is written, it is not true.

Q. (By Mr. Engelhard.) You certainly would not consider among minor conditions the question of wages, would you?

A. No.

Q. That is probably one of the major questions that arises in the matter of a contract?

A. Yes.

Q. Furthermore, isn't the matter of a closed shop also a very important term of a contract?

A. It is.

Q. You would not include that in minor conditions?

A. No, I don't believe so.

Q. When you discussed with Mr. Falk, did you discuss the question of closed shop?

A. No, I don't think we did.

Q. So, as I understand it, you say that this statement, "Only the hours you men wish to work remains to be settled" is not true, is not a fact?

A. If I could see the other things that would link that sentence up, I could explain that sentence better.

Q. I am asking you whether or not a person receiving this card and reading that sentence, "Only the hours that you men wish to work remains to be settled"—whether or not that statement, read by him, was a fact?

A. Not the way the sentence is written.

Q. Had Mr. Falk and you came to an agreement at that conference, that Mr. Falk would recognize your union?

A. No. He wanted to talk with the men first.

Q. There was no agreement of any kind entered into between Mr. Falk or you as to some future meeting?

A. Yes.

Q. Between you and him?

A. Yes.

Q. What was that agreement?

A. That I submit a list of the names of the men that I represent, the fourteen names.

Q. As you testified, you did not do that on advice of counsel?

A. Correct.

Q. Did you ever since that time attempt to see Mr. Falk?

A. No, outside of the meeting in Mr. Lamfrom's office.

Q. That is the only time that you saw him?

1608 A. That's right.

Q. You had agreed with Mr. Falk that you would submit a list of names when you left?

A. Yes, I did.

Q. Before you left?

A. I did.

Q. After you were advised by your counsel not to submit the list of names, did you ever notify Mr. Falk that you wouldn't submit the list?

A. No, I did not.

Q. When you met Mr. Falk in Mr. Lamfrom's office, did you at that time indicate to him why you did not submit a list of names?

A. I am not sure whether I did or not. Mr. Goldberg was at this meeting. I had explained everything to him, that had been told Mr. Falk, and expected him to tell it.

Q. You don't know, of course, why the five men who notified you that they were withdrawing their application cards—you don't know what their motive was?

Mr. Rissman: You mean the motive, or reason?

Q. (By Mr. Engelhard.) I understand you stated you had no personal contact with any of these men?

A. Not those, no.

Q. Do you know whether they joined some other labor organization?

609 A. I don't know.

Q. Did that card speak the truth when it said that that visit with Mr. Falk was favorable?

A. Yes. I was impressed as such.

Q. You say that the outcome of your visit was very favorable?

A. Yes.

Q. Is it correct to say that the inference may be drawn from this card that The Falk Corporation would enter into contract with your union, except for the matter of settling the question of hours, and some other minor matters?

Mr. Rissman: I object to the question. It calls for an opinion and an inference, and a lot of things that are not said in that card, and that cannot be intended from that card.

Trial Examiner Batten: Objection sustained.

Q. (By Mr. Engelhard.) You have on this Exhibit 36, which is a list of the men who signed applications, among them you have a Mr. A. Ottman. Do you know how many meetings that man had attended?

A. Since he became a member?

Q. Yes. I will give you the date of his application, March, 1937.

A. You mean our regular meetings?

Q. Yes.

610 A. I couldn't say.

Q. Any meeting?

A. Any meeting. I couldn't say.

Q. Do you know how many meetings Mr. C. Schnader, who sent an application marked May 15, 1937, attended?

A. I couldn't answer that, either.

Q. Those men are still members of your union?

A. They are both members.

Q. You have one man listed here as Mr. Sivright, who signed an application as early as June 15, 1935?

A. Yes.

Q. Do you know whether he is still a member?

A. He is not a member yet.

Q. He is not a member yet?

A. He is not a member yet. If he was, his application would not be on that list.

Q. Do any of these men—

A. Oh, yes, that's right.

Q. I have a list of the men—

A. That's right.

Q. (Continuing.) —in 1936?

A. Mr. Sivright is not a member.

Q. Has he withdrawn?

A. No, he has not withdrawn.

Q. Was he ever a member?

1611 A. Not to my knowledge.

Q. You have it on the list there. I understood your testimony was, that that was a correct list.

Mr. Goldberg: Of applications.

The Witness: A. They had filed applications. Two of these men are members, Ottman and Schnader, that's right, two of those men should be checked.

Q. (By Mr. Engelhard.) Exhibit 36 reads, "The following men are members of Local Union 311." That is not a correct statement, is it?

A. That is not a correct statement.

Q. What is this list supposed to represent?

A. The men who have made application, and also the members, as I get it. I don't know where that list came from, or who made it up.

Q. Did any of the men on this list become actual members of Local 311?

A. They did.

Q. Who are they?

A. Ottman and Schnader.

Q. And the others never became members of the union?

A. No.

Q. That is, they had never become entitled to any rights as members of Local 311?

A. No; they have not.

1612 Q. Are Ottman and Schnader still attending union meetings, so far as you know?

A. Yes, so far as I know. Of course, I believe they changed shifts at the plant, and at times they work nights, and can't attend the meetings. And again, I believe I have

seen both of them there at some time or other. I couldn't say. We meet twice a month.

Q. They are the only people who are entitled to attend your meetings, aren't they?

A. They are.

Q. This meeting of April 18th wasn't a meeting of the local?

A. No.

Q. That was merely a so-called organization meeting?

A. For the power plant.

Q. Yes.

A. The employees in the power plant.

Q. That would, of course, mean that Ottman and Schnader were not invited to that meeting, if you know?

A. They probably were, because I don't know just when they were initiated, how long they had been members, I can't recollect.

Q. How do you account for the fact that Mr. Sivright, who put in his application as early as June 15, 1935, had not become a member?

1613 A. That I don't know. That is before my time with the union as a representative.

Mr. Goldberg: May I show you a card?

I think you will have no objection. I just notice, I don't know whether Mr. Kingsland did, that Sivright is an employee of the New-Way Service Laundry. I don't know whether that will be of some significance. He signed up, and then he never went through with it at that time.

Mr. Engelhard: That is Sivright, or whatever his name is?

Mr. Goldberg: Yes.

Mr. Engelhardt: He was in a laundry, you say?

Mr. Goldberg: Yes. I don't want to put that in the record.

Mr. Engelhard: No.

Mr. Goldberg: But let him look at it to refresh his recollection.

The Witness: I never noticed that.

(Mr. Engelhard handing paper to the witness.)

The Witness: A. Oh, yes.

Q. (By Mr. Engelhard.) That means that he was a member of your local at one time?

A. No.

Q. That is merely his application?

A. That is merely his application. He did not pay 1614 the full initiation fee.

Q. I see. That shows he paid \$2.00 on the 27th of March, 1937?

A. Yes.

(Discussion outside the record.)

Mr. Lamfrom: It is stipulated and agreed by and between counsel for the International Union of Operating Engineers, Local 311, and counsel for Falk Corporation, that on April 28, 1937, a meeting was had at the office of the attorneys of record here for the respondent, at which were present Mr. Kingsland, Mr. Goldberg.

Q. (By Mr. Lamfrom.) Who were those other two gentlemen?

A. Mr. Bissel.

Q. Is that all?

A. And myself, yes.

Mr. Lamfrom: Yes. And Mr. Falk and Mr. Lamfrom, and the substance of the meeting was as follows:

The Union, represented by Mr. Kingsland and Mr. Goldberg, asked for collective bargaining rights for the union for the power house employees, and Mr. Lamfrom and Mr. Falk informed Mr. Kingsland and Mr. Goldberg that it was impossible for The Falk Corporation to recognize the union as the collective bargaining agent for the power house employees, because the company, The Falk Corporation, had already recognized the Independent Union of Falk Employees as the bargaining agent for the employees of The Falk Corporation, as representing the majority of such employees.

Q. (By Mr. Lamfrom.) Mr. Kingsland, since I dictated this stipulation, your mind is refreshed?

A. Right.

Q. And that is substantially what occurred?

A. That's right, correct.

Trial Examiner Batten: Are there any further questions from Mr. Kingsland?

Mr. Goldberg: Am I next in order?

Q. (By Mr. Goldberg.) You stated, Mr. Kingsland, that the conference with Mr. Falk was favorable. Will you please tell us why you considered favorable?

A. I went in and introduced myself to Mr. Falk, I explained to him that I had fourteen applicants from his power house, fourteen out of the seventeen men in his plant coming

under our jurisdiction, and wanted him to recognize us as their bargaining agent, and, after some discussion, explaining the way we worked and bargained for our men, and also the scale of wages and hours, he impressed me as being favorable towards recognizing us, but that he wanted to talk to the men first.

Q. Did you tell him what your scale of wages was?

A. I did.

1616 Q. What did you tell him in that regard?

A. That we are trying to put in a 40-hour week in all the plants, as near as possible to 40-hours, and that, as his plant was working 48-hours, we requested to shorten the hours in this plant to work a 40-hour week.

Q. What about wages?

A. With the wages to remain the same, thus bringing them up to our scale.

Q. You mean the weekly wage to remain the same?

A. The monthly wage to remain the same.

Q. What is your hourly wage set-up, of your union, in the City of Milwaukee?

A. At that time, it was eighty cents an hour for firemen, \$1.00 an hour for engineers.

Since then, under the agreements maintained since the first of this month, \$1.15 and ninety cents.

Q. Did you investigate what the men were receiving at The Falk Corporation at that time?

A. I don't think I did. I did mention that it was under our scale.

Q. It was under your scale?

A. It was under our scale, I know that.

Q. Did Mr. Falk make any remark as to how their wages compared to the union scale of wages, even on an hourly basis?

1617 A. I believe he did.

Q. What did he say?

A. That as far as he knew, the Falk Corporation was paying as good wages as any plant; and I pointed out to him that we had agreements in other plants whereby they were paying more, paying our scale.

Q. Did he indicate whether it would be a hardship to meet your scale or not?

A. No, he did not.

Q. To The Falk Corporation?

A. No, he did not.

Q. He did not?

A. He did not.

Q. Did anything occur within your union, internally, that you know about, that might have influenced the men to discontinue their application, and desire to become members of your union, between the date that you spoke with Mr. Falk, and the present date?

A. I didn't get the beginning of that question.

Mr. Goldberg: Will you read the question?

(Question read by the reporter.)

The Witness: A. No.

Q. (By Mr. Goldberg.) Do you feel, or do you have an opinion as to whether that notice posted on the company's bulletin board in the power house had any effect on 1618 the men's desire to continue their membership in your union?

A. Yes.

Mr. Lamfrom: That is objected to as incompetent, irrelevant and immaterial.

Trial Examiner Batten: I think he may state. He is the head of the union.

Mr. Lamfrom: Of course, we need a lot of head there.

Trial Examiner Batten: He just asked him whether he had an opinion.

Mr. Lamfrom: The Examiner is plainly right. I apologize.

Q. (By Mr. Goldberg.) What is your opinion?

Mr. Engelhard: Before you answer that, we object as being incompetent, irrelevant and immaterial, as to what his interpretative value is. That is for the Board to determine.

Trial Examiner Batten: The question, as asked, I don't believe calls for an interpretation. It calls for an opinion.

Mr. Engelhard: It opens the door for an interpretation. He could not express an opinion without it.

Trial Examiner Batten: I will sustain the objection as to his opinion. I presume you are referring, Mr. Goldberg, to Exhibit 31, that letter?

Mr. Goldberg: The one not in favor of the union.

1619 Trial Examiner Batten: I say, that is the exhibit you are referring to?

Mr. Goldberg: I think it is Exhibit 18, or 19.

Trial Examiner Batten: Exhibit 18. That's right. I will sustain the objection.

Mr. Goldberg: If the Examiner please, while I am on cross-examination, now, after a fashion, I would like to take this

ness and introduce testimony with regard to the unit, to make it very brief, insofar as the Independent Union does join in the stipulation.

There is the possibility that that question might arise, as whether there ought to be a separate unit set up.

Trial Examiner Batten: You may proceed.

Mr. Goldberg: I say, if at this time I could do it?

Trial Examiner Batten: As I understand, when you have finished with this witness along that line of questioning, it is your thought that, as far as your part of the case is concerned, you will be finished?

Mr. Goldberg: That's right. I do not plan on attending any other hearings, unless something comes up of importance.

Trial Examiner Batten: I think you should proceed, and will finish that part of it.

Mr. Engelhard: May I make this suggestion: That after all the cross-examination be finished, and then he can turn him into his own witness. That is the point.

Trial Examiner Batten: Yes.

Mr. Lamfrom: If I may, I would like to ask Mr. Kingsland one or two questions.

Trial Examiner Batten: I believe Mr. Clark hasn't questioned him as yet.

Mr. Clark: I think Mr. Clark has no questions.

Trial Examiner Batten: Do I understand, Mr. Lamfrom, that your questions are in the nature of cross-examination?

Mr. Lamfrom: Yes and no. I think there are only two, and they are questions which haven't covered—

Trial Examiner Batten: I was just wondering whether it was the same "few" that you spoke about yesterday, that Mr. Engelhard wanted to ask.

Mr. Lamfrom: No.

Mr. Engelhard: There was not a meeting of minds on that.

Trial Examiner Batten: Well, go ahead.

Q. (By Mr. Lamfrom.) In the conversation that you had with Mr. Falk, when you first saw him at his office, and the question of the scale came up, did Mr. Falk tell you that the Falk Corporation paid the engineers monthly, that is, the employees of the power house, monthly, and tell you the monthly rate which they paid them?

A. I don't think he told me the rate at which they were paid, but he told me they were on the monthly rate.

Q. Did you know what the monthly rate was?

A. Yes, I knew what it was before that.

Q. Did you know the number of hours that were worked?

A. Yes, I did.

Q. How did their monthly rate compare with the other companies in the city who had contracts with your union?

Mr. Rissman: I object, if the Examiner pleases, as entirely immaterial. We are not concerned with wages and hours.

Mr. Lamfrom: There was some evidence brought out by Mr. Goldberg with respect to that.

Trial Examiner Batten: With respect to the comparison? I do not consider it at all material how the wages of this firm—

Mr. Lamfrom: Except that there was some suggestion here.

Trial Examiner Batten: (Continuing.) —compared with other companies. I might say, I consider it to be immaterial, Mr. Lamfrom.

Mr. Lamfrom: If you say it, that ends the matter. I didn't know whether you did or not.

Trial Examiner Batten: I do not consider that at all material to the issues.

1622 Mr. Goldberg: May I suggest, it didn't really come out as a response to my question. It was volunteered by the witness.

Mr. Lamfrom: All right. I did not consider it material, but I did not want to leave the inference in the record that The Falk Corporation paid lower wages.

Mr. Rissman: It doesn't make any difference in the record.

Trial Examiner Batten: As I say, I do not consider it at all material in this case, I don't think the question of wages is in issue.

Mr. Rissman: Not yet.

Mr. Lamfrom: What do you mean by "not yet"? You said the wages are not in issue, and he said "not yet." I just want to inquire, confidentially, off the record, what he means.

Trial Examiner Batten: Are you through, Mr. Lamfrom?

Mr. Lamfrom: Yes.

Trial Examiner Batten: Proceed; Mr. Goldberg.

PHIL J. KINGSLAND, a witness called for and on behalf of the International Union of Operating Engineers, Local 11, having been previously duly sworn, was examined and testified further as follows:

Direct Examination.

Q. (By Mr. Goldberg.) Are you an operating engineer yourself?

A. I was, yes.

Q. For how many years were you an operating engineer?

A. Well, I first learned the trade seventeen or eighteen years ago.

Q. It requires a license to perform the business of an operating engineer in the City of Milwaukee, does it?

A. It does.

Q. Are you a licensed engineer?

A. I am.

Q. When were you given license?

A. Fourteen years ago, 1922.

Q. And were you actively engaged in that business since giving the license, up to the time that you took over your duties as business agent for the International Union of Operating Engineers?

A. I was.

Q. By who were you employed?

A. My last employer was The City of Milwaukee.

Q. And you resigned your position there to take over your duties as business agent?

A. I did.

Q. Do you know whether it requires a license to perform the duties performed by the employees in the power house of The Falk Corporation?

A. Yes, it does.

Q. Do you know of your own knowledge whether those at the power plant do have licenses?

A. They have to have, under the City ordinance.

Q. The nature of their work is such that they cannot be shifted around the plant, is that true?

Q. What is the fact with regard to whether other employees can be shifted on to their type of work?

A. Other employees cannot take any of their jobs, unless they happen to be licensed engineers.

Q. Where is the power plant located?

A. Separate from the rest of the plant.

Q. It is set up as a separate building?

A. The building probably adjoins the plant—no, I don't think—I am not sure about that.

Mr. Goldberg: Perhaps another witness will be able to tell us.

Trial Examiner Batten: There is testimony here showing that it is separate and distinct. It has been testified to, as to its physical layout.

Q. (By Mr. Goldberg.) There is a certain amount of skill required in the performance of the duties of an operating engineer at The Falk Corporation?

A. There is.

1625 Q. Do you know how many men are employed at the power plant?

A. I thought at that time that there were seventeen, but I have reason to believe now that in all, there are fifteen inside of the power plant.

Q. Do you know of any other individuals in the employ of The Falk Corporation that do work of the same nature, requiring skill of that type, in The Falk Corporation?

A. Yes, I understand there are two on the outside, operating a locomotive crane.

Q. There are two on the crane?

A. Yes.

Q. Do you know whether or not a license is required by the City of Milwaukee to be a crane operator?

A. There is, if they are steam-driven.

Q. The testimony of Mr. Falk was that they are steam-driven.

A. They must have a license.

Q. Are they subject to the jurisdiction of your union?

A. They are.

Q. Is your organization so constituted as to be able to represent and bargain for those employees?

A. They are.

Q. You have contracts with a number of employers having operating engineers employed by them?

1626 A. We have.

Q. And how many contracts, or approximately how many contracts, does your union have for men employed in the City of Milwaukee?

A. I would say we have men at from 225 to 250 plants,

but not all of them have we contracts with. At some plants, they have only one or two men.

Q. In such instances, you do the bargaining, however, with the employer?

A. We do.

Q. And on occasion, it is not reduced to writing, as I understand from some of your testimony?

A. That is true.

Q. Is it your endeavor to get a high scale of wages in this type of work, and a uniform scale of wages?

A. It is.

Q. Among these contracts that you have, do you have contracts with any other employers where the situation is similar to the one as it exists in The Falk Corporation with regard to various crafts existing?

A. We have.

Q. And in these instances, do you bargain for the operating engineers?

A. We do.

Q. You have made contract with those employers 1627 each year?

A. We do.

Q. You feel that your union could best represent these seventeen men?

A. Yes.

Q. And if the Board sees fit to order an election to determine the bargaining agent for the employees of The Falk Corporation, what is your opinion as to whether a separate unit ought to be set up for these seventeen men?

A. I believe that a separate unit of the power house employees and locomotive crane operators should be set up and bargained for separately.

Q. Do you know what the desire of the men employed at the power plant, and the other two men operating the cranes is with regard to a bargaining representative?

A. Before I went out to see Mr. Falk, they were very favorably inclined, I take it they were naturally so, or they wouldn't have filed application.

Q. Is it the desire of your union to represent the power house and the two crane operators for the purpose of collective bargaining?

A. It is.

Q. And your presence here indicates that, as well as your petition to intervene?

A. It does.
 1628 Q. Is that true?
 A. That is true.
 Mr. Goldberg: That's all.

Cross-Examination.

Q. (By Mr. Clark.) What other plants have you in mind when you compare them with The Falk plant?

A. Numerous others.

Q. What, for instance?

A. Seaman Body.

Q. What others?

A. Nordberg's.

Q. Anybody else?

A. Gender, Paeschke & Frey.

Q. Do you have separate contracts for the power house at those places?

A. We have.

Q. Do you have members of your organization at the Harnischfeger Company?

A. We have.

Q. Do you have a contract with the Harnischfeger for the power plant?

A. Not a contract; a statement of policy.

Q. Has that been changed since the recent C. I. O. activity out there?

A. No—oh, you mean our agreement?

1629 Q. Yes.

A. Why, yes. I was out there to bargain for the men. It has been changed, though.

Q. You have members in your organization who are employed in the power house at the Allis-Chalmers Company?

A. No, we haven't.

Q. Do you know who the operating engineers at the Allis-Chalmers are represented by?

A. I do not.

Q. Do you know of any power engineers in plants other than where you have members, how they are represented?

A. No, I do not.

Q. So there are many instances where power engineers are represented by other than your local?

A. I don't believe so.

Q. Who represents the men at Allis-Chalmers?

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A. I don't know. There is more than one plant.

Q. But you don't represent them?

A. No.

Q. Is the license required for locomotive crane operators the same as that required for operating engineers?

A. They both are steam-driven. There are different grades of license. The license of a horsepower locomotive crane is not near as much as the license of the horsepower of a steam crane.

1630 Q. With reference to The Falk Company, are you familiar with how the power house has been treated by the management out there, as to its being a separate unit?

A. How they have been treated?

Q. As to it being a separate unit.

A. No.

Q. For other purposes than collective bargaining?

A. No, I am not.

Q. Are you familiar with the set-up of monthly salary in that power house out there?

A. I am.

Q. That is about the same as the monthly salary at other departments of The Falk Company, isn't it?

A. I don't know about the other departments of Falk Company.

Q. As I understand it, you have two members in your local who are now employed by The Falk Company?

A. Right.

Q. You have had applications from others, and they have been withdrawn?

A. Not all of them.

Q. When does a man become a member of your local?

A. When he has paid his initiation fee in full.

Q. The two that you spoke of are the only ones who have done that, is that right?

1631 A. Correct.

Mr. Clark: I think that's all.

Trial Examiner Batten: Are there any further questions of this witness?

Mr. Goldberg: Yes, I want to ask Mr. Kingsland:

Redirect Examination.

Q. (By Mr. Goldberg) Are you familiar with whether the other production employees and maintenance men of the plant are paid on either the monthly or hourly or office work rate?

A. I am not.

Q. You don't know that?

A. I don't know a thing about it.

Mr. Goldberg: I think we ought to get a stipulation into the record. The company can inform us as to what the situation is, and I think that is material.

Trial Examiner Batten: I presume there will be someone from the company on the stand?

Mr. Lamfrom: That will all be shown.

Trial Examiner Batten: That will all be shown.

Mr. Lamfrom: We will show you the exact situation here with regard to that.

Trial Examiner Batten: If Mr. Rissman can keep it in mind.

Mr. Rissman: I will make a note of it.

1632 Trial Examiner Batten: Mr. Rissman can also keep in mind, when the superintendent or someone is on, to see that that matter is set forth in the record.

Cross-Examination (Continued).

Q. (By Mr. Rissman) Mr. Kingsland, do you know of another company that employs more than two men, under your jurisdiction, other than the Allis-Chalmers Company, that does not have a contract, that has had a labor controversy with your union, in the City of Milwaukee?

A. I can't think of any.

Q. You have canvassed the city pretty thoroughly, and attempted to get contracts wherever they employ any operating engineers, isn't that true?

A. Yes.

Q. And if there is such an instance in existence, it has escaped your attention?

A. It has, if there is.

Mr. Goldberg: That's all.

Trial Examiner Batten: Is there any further examination of this witness?

Q. (By Mr. Clark) You were asked a question, or I think you made the statement, that the employees of the power plant had signified their intention to have your local represent them, by reason of their application?

A. Yes.

1633 Q. Would the fact that they now ask to have their application withdrawn indicate that they do not want you to represent them?

A. I don't believe so.

Q. You feel that they still would like to have your local represent them for the purpose of collective bargaining?

A. I do.

Q. Despite the fact that they have asked you to return their fee and application?

A. Yes.

Q. Why do you feel that way?

A. Well, I feel that they became frightened when Mr. Falk spoke to them, intimidated, coerced; they did that, feeling they were frightened, afraid of losing their jobs.

Q. Do you think, if a suitable order were given by the Board restraining the company from interference and intimidation, that the men's action in withdrawing from your union would be changed, and that they would again desire your union?

A. I believe so.

Mr. Clark: That's all.

Trial Examiner Batten: Is there anything further?

(No response.)

Trial Examiner Batten: You may be excused.

(Witness excused.)

1634 Mr. Rissman: Mr. Srok.

ANTON SROK, a witness called for and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Rissman) Will you state your name, please?

A. Anton Srok.

Mr. Lamfrom: What is the name, please?

The Witness: Anton Srok.

Q. (By Mr. Engelhard) Will you spell that name, please?

A. S-r-o-k.

Q. (By Mr. Rissman) Are you employed by The Falk Corporation?

A. Yes, sir.

Q. How long have you been employed there?

A. About eight years, because I was working there before, and then I was absent, and then again.

Q. How long have you been working there this last time?

A. Next month it is going to be three years.

Q. What kind of work are you doing at the present time?

A. Machinist work.

Q. Are you a member of any labor organization?

A. Yes, sir.

Q. Which one.

1635 A. C. I. O.

Q. The Amalgamated Association of Iron, Steel and Tin Workers?

A. Yes, sir.

Q. How long a period were you absent from work at the company? You say you worked there for some time, and were absent?

A. Nine years, about, nine years.

Q. What period was that?

A. It was from June 25, 1925, up to September 17, 1934.

Q. (By Mr. Engelhard) You don't mean years, then? You mean months, don't you?

A. No, no. He says "period", so that is the period, nine years.

Mr. Rissman: 1925 to 1934.

Mr. Engelhard: Pardon me. I misunderstood him. 1925.

Q. (By Mr. Rissman) Directing your attention to August, 1933, were you in or around the Falk Corporation plant at that time?

A. I was.

Q. What were you doing there?

A. I was looking for job.

Q. At that time, did you have occasion to speak to Mr. Harold Falk?

1636 A. Mr. Harold Falk met me in the shop, yes, and I spoke to him.

Q. Tell us what he said and tell us what you said as closely as you remember.

A. Mr. Harold Falk remembered me from before, and he says what I am looking around there, and I told him that a man like me don't look for nothing else but for a job.

Then Mr. Harold Falk said that Mr. Green—not Mr. Green, but Mr. Senn is not in the shop now, he is sick, so I should come some other time.

Q. What other conversation did you have with Mr. Falk at that time.

A. I asked him how does he feel, as I usually ask a person when I meet him, and he says, "Well, not so good."

I said, "What's the matter," and so on, and he says that they had election in the shop, and the boys didn't vote as they expected them to.

Q. Did he state to what election he referred?

A. Well, I didn't really ask him, but he says that he feels, and the company feels, that they should sit down by the table together with the workers, and start something to better the conditions in the shop.

Q. Do you know what kind of elections took place in the shop just around that time?

A. Well, the fellows told me in the shop, they were 1637 for outside unions. I asked some fellows what was the trouble, see, and they told me that they vote for outside union, as I understand.

Q. Mr. Srok, during the first time you worked in the factory, the first period that you worked there, before 1925, were you a member of a labor organization?

A. You mean during the time that I was employed there?

Q. Yes.

A. No.

Q. Were there ever any attempts by labor organizations to organize the plant at that time?

A. No, not that I know of.

Q. Were you ever engaged, at any time that you worked with the Falk Company, in an attempt to organize a labor union?

A. Yes, at one time there was.

Q. When was the time?

A. It was about two years ago.

Q. Yes.

A. 1935, I think.

Q. Yes.

A. When some fellows tried to organize Federal Union there.

Q. Who were the fellows who tried to organize it?

A. Well, I can't remember all the names.

Q. About how many of them were there?

1638 A. There was about thirteen fellows met together.

Q. Were you one of them?

A. I was there, because I was called to come there.

Q. Did you participate with them in the attempt to organize a Federal Union?

A. Yes.

Q. What did you men do in that attempt, how did you go about attempting to organize a Federal Union?

A. We met one Sunday morning in a saloon, and we sat around a table there, and we decided that we want to go and see Mr. Seidy the next Saturday morning.

Q. You refer, now, to Herman Seidy, the secretary of the Milwaukee Federation Trades Council?

A. Yes.

Q. Go ahead.

A. Then we got together again, there wasn't as many, I don't remember exactly how many fellows was there then, but we go down there, and we asked Mr. Seidy—one of the men that was at the head of us, he asked Mr. Seidy if he could grant us a charter for Federal Union at The Falk Corporation plant.

Q. What did Mr. Seidy say?

A. Mr. Seidy then, he says, "I thought you know better than that."

1639 Q. What else did he say.

A. He says, "I am not going to walk across the street to organize anybody at all."

And then I said to him, I said, "We are right here, and yet you don't want to organize us."

Q. Did Mr. Seidy say why he didn't want to organize the workers at the Falk plant?

A. Well, he was referring to craft union, he wants crafts, he wants machinists to be in a crafts union.

Q. And he didn't want to grant you a Federal charter?

A. No.

Q. During the time that you have worked at the plant, Mr. Srok, have you ever been approached to join the Independent Union of Falk Employees?

A. I was not.

Q. Did anybody ever ask you to join that union?

A. Nobody never asked me to join the Independent Union.

Q. Since you have been a member of the C. I. O. Union, have you worn your C. I. O. button in the shop?

A. Yes, sir.

Q. And have you ever been questioned about the wearing of that button by any foreman or supervisor?

A. No, not by any foreman or supervisor, no.

Q. Have you been questioned by anybody?

A. Yes, by one official of the Independent.

1640 Q. What did he say?

A. Why, he happened to pass by.

Q. (By Trial Examiner Batten) Was this during working hours?

A. This was during working hours, when I started to work, afternoon.

Q. (By Mr. Rissman) In the plant?

A. In the plant.

He passed by, because his business is—

Q. Well, just tell us what he said.

Mr. Clark: I think the individual should be identified, if the witness can identify him.

The Witness: His name is Benny Moejis. He is secretary of the Independent Union.

Q. (By Mr. Rissman) Tell us what Benny Moejis said.

A. Benny Moejis came to me, and he had one of them beer bottle caps on his shirt, and he says, he says, "Beer I got for this, but what you got for your dollar for that button?" Then he grabbed it and he says, "Did that button give you a job here?"

I say, "No, Mr. Senn give the job to me here, not the button, not the union."

Q. Mr. Senn is your foreman?

A. Yes, he is the general boss on daytime.

Q. Was there anything else said about the button?

1641 A. I said, "Benny, I feel I am with the majority, and that is why I bought this button."

"Oh," he says, "no, you are not in the majority," and so on.

I said, "Well, what do you want me to join? Where do you want me to join? Where should I join then?"

He said, "Why don't you join with us?"

I said, "Who are you?"

He says, "Independent."

I said, "The Independent Union will give you a job here?" That is what I asked him.

Q. What did he say?

A. Then he walked away, and since that time he never stopped.

Q. What kind of work does Mr. Moejis do in the plant?

A. He is a stock chaser.

Q. Tell us what a stock chaser's job is.

A. A stock chaser's job is to see that the job has to be finished first, if the customer wants that job, they want to push the job ahead, see the job is finished and shipped out. That is his job.

Q. He takes care of seeing that the job goes through in accordance with the order for that job?

A. That's right.

Q. Would you have joined the Independent Union if you were solicited for membership?

1642 A. No.

Q. Why not?

A. I don't like Independent Union.

Q. Why don't you like the Independent Union?

Mr. Clark: I submit, that is immaterial.

Trial Examiner Batten: I cannot see that it is material, if he was solicited, and he said he would or wouldn't join. Suppose he didn't. Suppose he thought they were a bunch of thugs, I don't see, Mr. Rissman, it has anything to do with the issues in this case.

Mr. Rissman: I think it is material to get the worker's viewpoint as to why he wouldn't join this particular union, indicating his reason for it, the impression, what kind of a union it is.

Trial Examiner Batten: I don't care what his impression is, if you will just put the facts up here, as to how it was organized, who organized it, and how it operates, I think I am competent to decide what kind of an organization it is, A. F. of L., or C. I. O.; I don't know as I care particularly what his views are about it.

Mr. Rissman: Does the Examiner feel, then, that the opinion of the employee affected by a labor organization is not material as to the issues in this case?

(Discussion on objection.)

1643 Trial Examiner Batten: It will probably take a lot less time for him to answer this question than to go on with the discussion.

Q. (By Trial Examiner Batten) Do you have an opinion as to why you don't want to join the Independent?

A. Yes.

Q. Express it.

A. I would say that I wouldn't join the Independent Union, because I don't believe that workers should be independent from each other, if they want to accomplish anything at all for themselves.

Q. What do you mean by "independent"?

A. If they are independent from each other, they can't do anything, they are just separated. That is the way I think, and I believe there is some company interference with an independent union. I feel that is so. I don't know if it is true or not, but I feel like that.

Mr. Rissman: That's all.

Mr. Lamfrom: No cross-examination on our part.

Trial Examiner Batten: Mr. Clark?

Mr. Clark: I think I have no questions.

Trial Examiner Batten: You may be excused. That's all.

(Witness excused.)

Trial Examiner Batten: We will adjourn until 7:00 o'clock.

1644 (Whereupon, at 5:10 o'clock p. m., a recess was taken until 7:00 o'clock p. m. of the same day.)

1645 Evening Session.

(Whereupon, the hearing was resumed, pursuant to recess, at 7:00 o'clock p. m.)

Trial Examiner Batten: Are we ready to proceed, gentlemen?

Mr. Rissman: Yes.

Trial Examiner Batten: Mr. Clark, you withdrew the original of Board's Exhibit No. 27, and were going to furnish a copy instead. Have you obtained the copy yet?

Mr. Clark: Yes, I have it here.

Trial Examiner Batten: Very well.

STELLAN LARSSON, a witness called for and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Rissman) Will you state your name, please?

A. Stellan Larsson.

Q. Are you employed by The Falk Corporation?

A. I am.

Q. How long have you worked there, Mr. Larsson?

A. Eight years and three months.

Q. And in what department are you now employed?

A. Erecting department, assembly.

1646 Q. How long have you been employed in that department?

A. Four years.

Q. Do you know Anton Kinch?

A. I do.

Q. Did you know Mr. Kinch when he was employed in the factory?

A. I did.

Q. Was he employed in the same department with you?

A. He was.

Q. Directing your attention to the Fall of 1936, Mr. Larsson, do you recall that at that time there was a reclassification proposal petition being circulated around the shop?

A. Yes.

Q. Can you tell us if you ever saw Mr. Kinch circulating around the shop with that petition?

A. Mr. Kinch never circulated that petition.

Mr. Lamfrom: Just a minute. The answer is not responsive to the question.

Trial Examiner Batten: Read the question.

(Question read by the reporter.)

Mr. Rissman: I think the answer is responsive.

Mr. Lamfrom: It isn't. He got a little too quick.

Trial Examiner Batten: Perhaps that is the reason I am here.

1647 Q. (By Trial Examiner Batten) You understood the question, Mr. Larsson?

A. I did.

Q. Did you ever see Mr. Kinch circulating petitions?

A. No.

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(By Mr. Rissman) Did you ever see employees talk to Mr. Kinch about this petition?

Yes.

And where did you see them?

Mostly at Kinch's bench, where he was working.

During the time that you were employed at the factory and within the past year, has any supervisory official of the plant ever spoken to you about union affairs, or unions in general?

Yes.

Who has spoken to you?

The superintendent, Mr. Green.

When did Mr. Green speak to you?

I don't remember the date.

Can you place the time for us?

It was two days before the C. I. O. meeting, the first O. meeting.

In what month was that, do you know, Mr. Larsson?

That was in April.

Q. 1937?

A. 1937.

Q. Where did Mr. Green speak to you?

On my job.

What did he say?

I prefer not to use the profanity Mr. Green used.

(By Trial Examiner Batten) That's all right. You are free. Just tell us exactly what he said, no matter what it was.

I was working. Mr. Green came by on my job, and told me down from the job, he asked me, "What the hell do you mean?"

I looked at him, I didn't understand what he meant, so I told him, "What do you mean?"

(By Mr. Rissman) What did he say?

"What do you mean by walking around in the shop?" I looked at him again, I said, "I am not walking around in the shop."

Yes, you have been walking around in the shop for two months, telling the fellows to go to the C. I. O. meeting."

I denied that I had done so, because I had no knowledge of the C. I. O. meeting.

Had you been walking around in the shop, asking the fellows to go to the C. I. O. meeting?

I had not.

Q. Had you been walking around the shop, asking the fellows to go to any meeting?

A. No, sir.

Q. Were you a member of the C. I. O. at the time Mr. Green spoke to you?

A. I was not.

Q. Where were you at the time he spoke to you, what were you doing when he spoke to you?

A. I was scraping bearings.

Q. What else did Mr. Green say at that time, if anything?

A. He threatened to fire me, showed me the door, and the steps leading out of the factory.

Q. What did he say when he showed you the door and the steps leading out of the factory?

A. "I am going to fire you. There is the door and steps."

Q. Did he point to the door, as you have just indicated?

A. Yes.

Q. What effect, if any, did that statement of Mr. Green's have upon you?

A. It did two things to me.

Q. What did it do to you?

A. First, it stopped me from going to the first C. I. O. meeting.

Q. Had you intended to go to the first meeting?

A. Yes.

Q. And why didn't you go?

1650 A. Because I was afraid, I knew I would be spotted.

Mr. Lamfrom: Now, I move that that be stricken.

Trial Examiner Batten: I presume it may remain, if he knew it.

Q. (By Mr. Rissman.) How did you know you were going to be spotted?

A. I felt it.

Mr. Rissman: That's all.

Cross-Examination.

Q. (By Mr. Lamfrom.) After this talk that you had with Mr. Green, you joined the C. I. O., didn't you?

A. I did.

Q. And you are now a member of it?

A. Yes.

Mr. Lamfrom: That's all.

Trial Examiner Batten: Mr. Clark?

Mr. Clark: I have no cross-examination.

Trial Examiner Batten: That's all, Mr. Larsson. (Witness excused.)

Mr. Rissman: Grant Neal, please.

GRANT NEAL, a witness called for, and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination.

651 Q. (By Mr. Rissman.) Will you state your name?

A. Grant Neal.

Q. You are a brother of William Neal?

A. Yes, sir.

Q. Are you employed by The Falk Corporation?

A. Yes, sir.

Q. How long have you been employed there, Mr. Neal?

A. Between five and a half and six years.

Q. In what department are you now employed?

A. In the foundry, in the large foundry.

Q. Mr. Neal, during the time that you have been employed in the factory, and particularly within the last six months, has any person in a supervisory or management capacity of the company spoken to you about labor organizations?

A. Yes, sir.

Q. Who has spoken to you?

A. The welding boss.

Q. Who?

A. The welding boss. His name is Edinburg.

Q. Edinburg?

A. Edinburg.

Q. Do you refer to Henning Hedberg?

A. That's it, Henny Hedberg.

Mr. Lamfrom: Would you mind speaking a little louder, Mr. Neal?

652 The Witness: A Henny Hedberg, the night welding officer.

Q. (By Mr. Rissman.) And when did he speak to you, if you remember?

A. On Friday night, on May 7th.

Q. While you were working?

A. While I was working.

Q. What did he say, and what did you say?

A. He asked me if I would join the Independent Union here, and I told him "no". He asked me why not. I told him I didn't feel like, right now, that I wanted to join the Independent Union, and he kept on, and he wanted to know

why I didn't, and I told him that I figured I didn't want the Independent Union now.

He said "we all might as well join the Independent Union, and if we don't like the Independent Union, we will switch to the C. I. O."

Q. Did he say anything else about the C. I. O.?

A. Well, he just said you had to pay fifty cents a month in the Independent Union, and it would cost us a dollar a month in the C. I. O.

Q. Is he your boss?

A. No, sir.

Q. In what department is he boss?

A. In the welding department.

1653 Q. Did he speak about any men in his department in connection with union affairs?

A. Not until later on in the conversation.

Q. What did he say?

A. He said he had one man in his department that was a C. I. O. man in the beginning, and they talked to him, and got him in the Independent Union, and he came back and apologized for it.

Q. Did any other management representative of the company ever speak to you about union affairs?

A. Well, not as I know of, any management of any kind.

Q. Any person not a member of the C. I. O.?

A. Well, there has been lots of talk around, but I just couldn't tell you who it was; but this was the only one that I had in particular.

Q. Did any timekeepers ever speak to you?

A. One timekeeper, by the name of Durst.

Q. What is his name?

A. Durst.

Q. When did he speak to you?

A. Well, that was along between the time, the 6th and the 8th, or 10th, of May, along in there.

Q. 1937?

A. 1937.

Q. Where did Mr. Durst speak to you?

1654 A. In the hospital.

Q. During your working hours?

A. During my working hours.

Q. You went to the hospital for treatment?

A. I went to the hospital to have them take some sand out of my eye.

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- Q. What did the timekeeper say to you at that time?
A. He wanted to know if I was going to join the Independent Union. I told him, "No, not now."
Q. Did he say anything about any other unions at that time?
A. No, he didn't say anything, only that the company was going to fight the other union.
Q. Did he mention the names of any unions the company was going to fight?
A. He just says, "The outside union."
Mr. Rissman: That's all.

Cross-Examination.

- Q. (By Mr. Lamfrom.) Are you a member of the C. I. O.?
A. I am a member of the C. I. O. now.
Q. When did you become a member?
A. Well, I will say sometime in April. I don't know just the date.
Mr. Lamfrom: That's all.
Trial Examiner Batten: Mr. Clark?
655 Mr. Clark: I have no questions.
Trial Examiner Batten: That's all, Mr. Neal.

(Witness excused.)
Mr. Rissman: Mr. Paul M. Bartholomew.
Mr. Lamfrom: Just a minute. Before you go ahead, I would like to recall Mr. Neal one minute. Will you take the stand again, Mr. Neal?

GRANT NEAL, a witness called for and on behalf of the National Labor Relations Board, having been previously duly sworn, resumed the stand and testified further as follows;

Cross-Examination (Continued).

- Q. (By Mr. Lamfrom.) When did you have this conversation that you testified to with the timekeeper?
A. Sometime between the 6th and the 10th or 11th of May.
Mr. Lamfrom: That's all.
(Witness excused.)
Mr. Rissman: Mr. Joseph Pemper.

JOSEPH PEMPER, a witness called for and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Rissman.) Will you state your name, please?

A. Joseph Pemper.

1656 Q. And where are you employed?

A. The Falk Corporation.

Q. How long have you been employed there?

A. I started to work there in 1916, March 7th. Off and on, I have been there since.

Q. How long has been your last period of employment with the company?

A. The 15th of October, 1935, I started there the last time.

Q. What kind of work do you do there, Mr. Pemper?

A. I am a machinist there.

Q. Who is your present foreman?

A. Charlie Walter.

Q. During the time of your employment, has a management representative of the company ever spoken to you about union matters, during the past six months?

A. Yes.

Q. Who?

A. Mr. Green.

Q. Harry Green, the superintendent?

A. Yes.

Q. What was it Mr. Green said to you? What did he say to you? Will you tell us what it was?

A. He stopped me on the way going home, he said, "I am surprised." And I was surprised, I didn't know what
1657 he was talking about.

I said, "What do you mean, Mr. Green?"

He said, "I hear that you are organizing," and that pretty near knocked me off my feet.

I said, "I still don't understand you, Mr. Green."

He said, "You are working for the C. I. O."

I said, "That is news to me." I told him, "You have been misinformed by your informer."

Q. Do you recall when that conversation took place?

A. About the 11th of April.

Q. At that time, Mr. Pemper, at the time Mr. Green spoke to you, were you a member of the C. I. O.?

- A. No.
- Q. Are you a member now?
- A. Yes.
- Q. When did you join?
- A. The 14th of April.
- Q. Did Mr. Green say anything else at that time?
- A. Well, he says that he didn't see why we should give our money to the bloody Jews, that we could give it to the men that we work with.
- Q. Did he indicate to whom he referred to?
- A. No, outside of saying for our own union.
- Q. Did Mr. Green say why he was surprised that you were working for the C. I. O.?
- 658 A. Yes.
- Q. Tell us what he said.
- A. Because he says, "You have been taken care of, and you also will be taken care of again."
- Q. What did he mean when he said "You have been taken care of"?
- A. I had a raise about two weeks before that, in pay.
- Q. Did he say anything else at that time?
- A. Yes, he says, "You can work for our union as long as you want, nobody will say a word."
- Q. Did he indicate what he meant by "our union"?
- A. No, but I understood him to mean the Independent Union.
- Q. Aside from Mr. Green, what other employee in a supervisory or semi-supervisory capacity spoke to you about union affairs?
- A. None.
- Q. Were you ever approached to join the Independent Union?
- A. Well, I don't know if you would call it being approached, but I had an application handed to me at my machine during working hours.
- Q. By whom?
- A. Joe Trost.
- Q. Did you know what Joe Trost's position was with the company at that time?
- A. I was under the impression he was a straw-boss.
- 659 I am still under that impression.
- Q. Didn't Mr. Trost say anything when he gave you the application?
- A. No, not a word.
- Q. At the time Mr. Green made these statements to you

about the C. I. O., what effect did those statements have upon you?

A. Well, I didn't fall asleep until about 2:00 o'clock. The next day, I came to my work, and the night man handed me a whole handful of C. I. O. cards, and I started organizing, and I signed up all the boys in that department but two; the next day I signed up myself.

Q. You were not intimidated by Mr. Green's statements, were you?

A. Well, it worked on me, I couldn't fall asleep. I was thinking, "Why should somebody squawk on me when I wasn't guilty?"

Q. Did you resent that statement?

A. I don't know how to answer that.

Mr. Rissman: That's all.

Cross-Examination.

Q. (By Mr. Lamfrom.) How long after Green talked to you, as you testified, did you join the C. I. O.

A. Two days after.

Q. And you were active two days afterwards in getting members signed up to the C. I. O., weren't you?

A. I was active the very next day.

Q. The very next day. So, the effect of Mr. Green's statement was to sort of stimulate you into going into the C. I. O., wasn't it?

A. To a certain extent, yes.

Mr. Lamfrom: That's all.

Redirect Examination.

Q. (By Mr. Rissman.) Why did you join the C. I. O. the day after Mr. Green spoke to you?

A. Not the day after. Two days after.

Q. Or two days after.

A. I would have joined the next day, but I didn't have any more cards to sign up, I had to wait until I got some more cards.

Q. Why would you have joined the next day if you could have, the next day after Mr. Green spoke to you?

A. Because I figured that was the working man's organization to belong to.

Mr. Rissman: That's all.

Mr. Lamfrom: Just a minute, please.

Recross-Examination.

Q. (By Mr. Lamfrom.) Did Mr. Green's talk with you interfere with your freedom of choice in joining the organization that you wanted to join?

1661 A. He didn't interfere with me, but he wanted me to work for the other organization.

Q. Well, you answered my question, that he didn't interfere with you.

Had you made up your mind, prior to Mr. Green's talk with you, that you were going to join the C. I. O.?

A. No, I didn't know anything about it until he talked to me.

Q. Then you got kind of sore about it, didn't you?

A. Yes.

Q. And then you joined the C. I. O.?

A. Yes, and I would do so again.

Q. And when you joined the C. I. O., that was your free choice, wasn't it?

A. Yes.

Mr. Lamfrom: That's all.

Trial Examiner Batten: Mr. Clark?

Mr. Clark: I have no questions.

Mr. Rissman: That's all.

Trial Examiner Batten: That's all.

(Witness excused.)

Mr. Rissman: There was one other man, who is not here, who would have been my last witness.

I rest my case, with the reservation of the right to call this one other man, and I have yet to consult with Mr. 1662 Adelman, I may yet call him as a witness.

With the exception of those two, the Board will rest.

Mr. Lamfrom: I think, before we are required to proceed, if you are going to introduce Mr. Adelman's testimony, you had better introduce it.

Trial Examiner Batten: I wonder if I could see the attorneys in chambers for a moment?

Mr. Lamfrom: You certainly can.

(Whereupon, the Trial Examiner and counsel retired to chambers, and later returned to the hearing room.)

Trial Examiner Batten: The Board has rested its case, with the possible exception of one witness. If they decide to call that one witness, it will be the first thing Monday morning.

Now, in order that the Respondent and the Independent Union will have some time to prepare their case, it was the feeling of all of us that if they do have that time, some time will be saved, and you will also make up a little time the first of the week.

We will adjourn at this time until 9:00 o'clock Monday morning, instead of 9:30.

(Whereupon, at 8:05 o'clock p. m., August 20, 1937, the hearing was adjourned to 9:00 o'clock a. m., Monday, August 23, 1937.)

1666 BEFORE THE NATIONAL LABOR RELATIONS BOARD.
(Caption—XIIIC57 and XIIR85)

Room 409, Milwaukee County Courthouse,
Milwaukee, Wisconsin,
Monday, August 23rd, 1937.

The hearing was resumed, pursuant to adjournment, at
9:00 o'clock a. m.

Before:

James C. Batten, Trial Examiner.

Appearances:

Robert R. Rissman, and

S. G. Lippman, Attorneys, on behalf of the National
Labor Relations Board.

A. G. Goldberg, 511 Warner Building, Milwaukee, Wis-
consin, appearing for International Union of Oper-
ating Engineers, Local No. 311.

Giles F. Clark, of Alexander, Burke & Clark, 110 East
Wisconsin Street, Milwaukee, Wisconsin, appearing
for Independent Union of Falk Employees.

Lamfrom, Tighe, Engelhard & Peck, by Leon B. Lam-
from, and

A. J. Engelhard, appearing for The Falk Corporation.

1667 Proceedings.

Trial Examiner Batten: Are you ready to proceed, gen-
tlemen?

Mr. Lamfrom: We are ready.

Mr. Rissman: Mr. Meindle, will you take the stand, please.

Trial Examiner Batten: Mr. Rissman, I have a transcript
for August 17th.

Mr. Rissman: I have it for August 17th, also.

Trial Examiner Batten: For the 17th?

Mr. Rissman: Yes.

Trial Examiner Batten: I wonder if you happen to go up
to the office this morning, you will find out if the first day is
in yet.

Mr. Rissman: That is the 17th?

Trial Examiner Batten: Yes, it was probably mailed direct.

Mr. Rissman: It was probably mailed to the office. I haven't been there this morning.

Mr. Lamfrom: We received a copy, too.

Trial Examiner Batten: Did you get the first day?

Mr. Lamfrom: I think it was the first day, yes.

LOUIS MEINDLE, was recalled as a witness by and on behalf of the National Labor Relations Board, being previously duly sworn, testified further as follows:

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Direct Examination.

Mr. Rissman: Mr. Meindle testified before, so he is being recalled.

Q. (By Mr. Rissman.) Will you state your name.

A. Louis Meindle.

Q. You are the same Louis Meindle who testified here previously?

A. I am.

Q. You are secretary of the Amalgamated Association of Iron, Steel and Tin Workers?

A. I am.

Q. Mr. Meindle, what employees of the Falk Corporation are eligible for membership in your union, Local 1528 of the Amalgamated Association of Iron, Steel and Tin Workers of North America?

A. Why, all of the employees in the plant proper, itself, excluding the office.

Q. Will you tell us what departments of the Falk Corporation are excluded?

A. Excluded?

Q. Yes.

A. The departments that are excluded would be the drafting room, the engineers, the main office and timekeeper's office.

Q. By "engineers," what kind of engineers do you refer to?

A. Drafting engineers and the engineers that are in 1669 the office.

Q. That is, technical engineers?

A. That is right.

Q. You do not refer to the powerhouse engineers?

A. No, sir.

Q. Or any of those?

A. No.

Q. Can you tell us, Mr. Meindle, how many employees of the departments from which employees are eligible have indicated that they chose the Amalgamated Association of Iron, Steel and Tin Workers of North America as their collective bargaining agency?

Mr. Lamfrom: I object to that as incompetent, irrelevant and immaterial, and not the proper evidence to prove anything with reference to the right of this union to bargain for a majority of the employees.

Mr. Clark: I further, your Honor, object on the ground that it is asking for a conclusion.

Mr. Rissman: Shall I lay the foundation?

Trial Examiner Batten: I think you had better lay more foundation than you have so far as this witness is concerned.

Mr. Rissman: All right.

Q. (By Mr. Rissman) What is your position in the union, Mr. Meindle?

1670 A. Financial secretary.

Q: What are your duties as financial secretary?

A. To keep all the records and financial statements of the lodge.

Q. And among those records do you keep a record of the number of persons who make application to the union?

A. It is my duty to take all applications and report all applications to the grand lodge at Pittsburgh.

Q. How recently did you make a computation of the number of applications you have?

A. My records were cleared up last night and the approximate number of members we now have can be given.

Q. Where do you have your records?

A. I have them at home.

Q. They are in your custody?

A. My custody.

Q. And you are acquainted with them?

A. I am.

Q. How many employees did indicate that they wished to apply for membership in your organization?

Mr. Lamfrom: That is objected to as not the proper proof, not the best evidence. The records are available and they should be produced here.

Trial Examiner Batten: Well, he can testify as to what the number is, for whatever that is worth.

1671 Q. (By Trial Examiner Batten) You have these records at home, you say, Mr. Meindle?

A. I have.

Q. Will you bring those records in to the hearing tomorrow morning?

A. I can, or I can bring them this noon.

Q. Bring them in this noon at two o'clock.

A. I can.

Q. You may state what your records show?

A. Our records show approximately 700 members.

Q. (By Mr. Rissman) Have you an opinion, Mr. Meindle, as to whether or not there are any employees at the plant—
Mr. Lamfrom: What was the last question? Pardon me, I didn't hear it.

Mr. Rissman: I haven't finished.

Mr. Lamfrom: I did not hear the question.

Mr. Rissman: I haven't finished it.

Q. (By Mr. Rissman) You have indicated that they will choose your organization but have not yet signed application cards?

Mr. Lamfrom: I object to that as incompetent, irrelevant and immaterial, and not the proper method of proof.

Trial Examiner Batten: I will sustain the objection.

Q. (By Mr. Rissman) Have you any opinion, Mr. Meindle, as to the result of a secret ballot among the 1672 ployees of the Falk Corporation for choice of collective bargaining agent?

Mr. Lamfrom: Just a minute. That is objected to. It is simply calling for his opinion, what I may say, a conclusion of the witness.

Trial Examiner Batten: I will sustain the objection.

Q. (By Mr. Rissman) Do you know, Mr. Meindle, if there are employees at the Falk Corporation in addition to the 700 who signed application blanks for your union, who desire to be represented by your union?

A. Yes.

Q. How do you know that?

A. I have been told by numerous fellow-workers, and also by some of the rival organizations, that if it was possible—if it was definite, they would indicate that they wanted the Amalgamated Association to represent them as their bargaining agent.

Q. If what was definite?

A. If either union was a definite organization. As this trial came up, and this trial has been in the wind now for several months, they are just standing by to see just what the

come would be, and in the meantime, neither one of them
accepted membership in either lodge.

Q. Do you know approximately how many employees are
in that position you have just described?

A. Well, according to all the information that I had
received, and a lot of it was very reliable information, it
s from the rival organization, they said there was approx-
ately 200 to 300 fellows that haven't signed applications
either union, that if the C. I. O. won out in this fight, why,
y would accept the C. I. O. as their bargaining agent.

Mr. Rissman: That is all.

Mr. Engelhard: In the absence of the record, your Honor,
seems rather difficult to cross examine.

Trial Examiner Batten: Well, the witness has stated that
will produce—that he will have his records here at two
lock.

Mr. Lamfrom: That is all.

Mr. Clark: I should like to ask leave to examine him when
does produce his records.

Trial Examiner Batten: Well, that is entirely up to the
ness. He may produce his records; and you can ask to
mine them.

Mr. Clark: I don't understand.

Trial Examiner Batten: I say, when he produces the rec-
is you may ask him for the privilege of examining them.

Mr. Clark: No, I would like to examine the witness in
nection with the records when he does produce them.

Trial Examiner Batten: Yes.

Mr. Engelhard: We intend to cross examine him
4 when he has the records here, because now it is just a
matter of guess work on his part.

Trial Examiner Batten: Well, I don't know that I would
guess work.

Mr. Engelhard: I mean the questions I would put to him,
would have to answer on approximations, rather than give
inite answers.

Trial Examiner Batten: That is all.

Witness excused.)

Mr. Rissman: The Board rests, and we now move to
end the complaint to conform with the proof introduced so

Mr. Engelhard: Well, that is a rather indefinite state-
nt, to amend the complaint in conformity with the proof
roduced.

As we understand it, there are three charges here. Are there any additional charges?

Trial Examiner Batten: My understanding is there are no additional charges except those which are specified in the complaint.

Mr. Engelhard: And he makes a motion to amend the complaint. So that we may know what we have to meet by reason of any amendment to the complaint, we ought to know definitely what the amendment is.

Trial Examiner Batten: I assume his motion is to amend the complaint to conform to the proof.

1675 It is not my understanding that that motion in any way means that there are any issues or any charges against the respondent except those which are specified in the complaint.

Mr. Engelhard: In the complaint.

Trial Examiner Batten: That is my very definite understanding.

Mr. Lamfrom: If the evidence which has been introduced here by the National Labor Relations Board tends to prove the charges in the complaint, then there need be no amendment.

Trial Examiner Batten: I presume he has a perfect right to make it, if he so desires.

Mr. Lamfrom: In what respect is he amending the complaint?

Trial Examiner Batten: He hasn't amended it, as I understand—

Mr. Rissman: In instances in which the proof tends to vary from the complaint, if it does.

Mr. Lamfrom: Well, but we ought to know what it is. If it does, will you kindly point out to us in what respect it does differ, so that we know just what position we are in.

Mr. Rissman: Counsel have been present throughout the hearing and they know what the proof indicates, as well as the record itself does, and I have made my motion to amend the complaint to conform to that proof.

1676 I don't think any further designated specification is necessary.

Mr. Engelhard: May I ask counsel whether or not he takes the position that his proof has proved anything other than, or rather, has tended to sustain anything other than the charges stated in the complaint?

Mr. Rissman: The proof was intended to sustain the

charges contained in the complaint and those charges only. There may be variance of a date or some immaterial matter at that respect.

Mr. Lamfrom: Well, in just what respects are you attempting to move to have the complaint amended? We must now, even if it is an amended complaint, if the Examiner please, just what we have got to meet.

I don't know what counsel means by that.

Either his proof did or did not sustain or tend to sustain the complaint.

Trial Examiner Batten: Well, I think he just stated that in some minor respects, such as a date or something of that kind, the proof is at variance with the complaint, that it is his intention in that respect to amend the complaint, and not as to any issues.

Mr. Rissman: Counsel intend to meet the proof submitted or should meet it by meeting all of the proof submitted, and they will meet any amendment to the complaint 677 if the proof has amended the complaint.

Mr. Lamfrom: Your understanding of an amendment to the complaint is somewhat different than ours, but at least we now know that you do not intend to amend the complaint with respect to any specific charges set forth therein.

Mr. Rissman: We don't introduce any new issues and do not intend to delete any major issues.

Mr. Engelhard: Just so we understand then what your purpose is in making this motion.

Trial Examiner Batten: Do I understand that on the basis of that understanding of the matter that there is objection to it?

Mr. Lamfrom: Well, if counsel's purpose is simply to make certain that if there is a variance in dates or places or the happening of events which have been shown in the testimony or the persons, any such evidentiary matters as that, why, of course, we have no objection.

Trial Examiner Batten: Well, that is my understanding. Is that right, Mr. Rissman?

Mr. Rissman: That is right.

Trial Examiner Batten: If there is no objection the motion will be allowed.

Mr. Lamfrom: Now, if the Examiner please, at this time we desire to make the following motions.

Trial Examiner Batten: Incidentally, Mr. Lamfrom, 678 you don't happen to have an extra copy of this, do you?

Mr. Lamfrom: Of the motion?

Trial Examiner Batten: I thought you had them all prepared.

Mr. Lamfrom: No, these are oral motions.

Trial Examiner Batten: All right.

Mr. Lamfrom: We move to dismiss the petition for investigation and certification of representatives pursuant to Section 9(c) of the National Labor Relations Act, which is denominated here as Case No. XII-R-85, and which was consolidated with Case No. XII-C-57.

We also move to dismiss the complaint in Case No. XII-C-57, and I will state my reasons for these motions.

It is alleged in the petition by Meyer Adelman, Field Organizer, Steel Workers Organizing Committee, that the "approximate number of employees 1600; that the description of the bargaining unit which petitioner claims is appropriate is all employees at the Milwaukee plant except supervisory employees, draftsmen, employees in the general office, and employees in the payroll department; that the number and classification of employees which representatives on whose behalf petition is filed claim to represent approximately 1400 employees at the Milwaukee plant", except those other kind of employees mentioned.

And it is further alleged in the petition that "the 1679 Independent Union of Falk Employees is a labor organization created in violation of Section 8(2) of the National Labor Relations Act."

To the first allegation we say that there is no competent proof, that the petitioner represents the number of employees alleged in the petition.

Referring to the second charge in the petition we say that there is no competent proof that the Independent Union of Falk Employees is a labor organization as stated in the petition.

As far as the complaint is concerned, the charges are that "a unit, for the purpose of collective bargaining composed of all the employees employed by the respondent at the Milwaukee plant, except supervisory employees, draftsmen, employees in the general office, and employees in the payroll department, would insure to employees of the respondent at the Milwaukee plant the full benefit of their right to self-organization and to collective bargaining and would otherwise effectuate the policies of the National Labor Relations Act and

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is a unit appropriate for the purpose of collective bargaining."

We submit that there is no competent proof of that allegation.

Allegation No. 5 is to the effect that "a majority of the employees in the said unit have designated the union," 1680 which I have described in allegation No. 4, "have designated the union as its representative for the purpose of collective bargaining with respondent, such designation having been made by signed application cards and membership in the said union."

And that "by virtue of Section 9(a) of said Act, the union is and has continuously been the exclusive representative of all employees in the said unit for the purpose of collective bargaining."

We say that there is no competent proof of that, and furthermore that having been alleged in paragraph 5 of the complaint, that the designation was made in a specific manner by signed application cards and membership in said union, it is incumbent upon the National Labor Relations Board to prove by affirmative proof, which they haven't done by any part of the proof which is sufficient competent evidence. -

No. 6 allegation is that "at various times respondent, when requested by the union has refused to bargain collectively with the union as the exclusive bargaining agency for all of its employees as above enumerated. Said employees together constitute an appropriate bargaining unit."

There is no competent proof here, as I see it, that the Falk Corporation has so refused to bargain collectively.

The Falk Corporation refused to bargain collectively with the union—now, referring to the C. I. O. union—at the time

Mr. Adelman met with Mr. Falk, on the ground that under the Wagner law the Falk Corporation was obligated 1681 to bargain with a majority of its employees and had recognized at that time the Independent Union of Falk Employees, upon proof indicating such fact, as the representative of a majority of all employees, all employees of the Falk Corporation, and it was so stated to the representatives of the C. I. O. union at the time.

The eighth paragraph of the complaint deals with the Anton Kinch matter, and I submit that the evidence with reference to Anton Kinch is to the effect that Anton Kinch was discharged for legal cause.

I am not going into the details here on these things, because

I do not think it is necessary. The Examiner recollects the evidence undoubtedly just as well, if not better, than I do.

The next charge is paragraph 9, that the company or "the respondent by its officers and agents, while operating as hereinafore described, up to and including the date of the filing of the complaint, dominated, fostered, encouraged, and interfered with the formation, enlistment of membership, and administration of a labor organization of its employees known as the Independent Union of Falk Employees and did and does now contribute financial and other support thereto."

Now, I submit that the evidence shows that no such thing happened, and I submit that the evidence shows that 1682 up to the formation of the corporation known as the Independent Union of Falk Employees, there was no independent union or association of Falk Employees in the true sense of the word; that while some of the employees attempted to organize, they saw Mr. Burke, they talked about a voluntary organization and a corporate organization, and as time went on and the voluntary organization seemed to have no cohesion, they did not know how to go about it, the voluntary organization was abandoned and the corporation was formed, known as the Independent Union of Falk Employees, of which Mr. Wilson is one of the incorporators, and from that date on the real and only independent union of Falk employees came into existence and has since been in existence, and if the Examiner please, there isn't one shred, not one dot, not one iota of evidence that the Falk Corporation has in any manner interfered with, dominated, contributed financial support, or has done anything else which is in violation of the Wagner Act, which would render this organization as far as the Falk Corporation is concerned, a company union in respect to which the Falk Corporation has committed an unfair labor practice.

Trial Examiner Batten: Do I understand, Mr. Lamfrom, that your position is that no matter what might have transpired prior to the incorporation, that certainly that is not chargeable to the corporation?

Mr. Lamfrom: Oh, no, I don't take that position at all.

1683 I merely take the position, if the Examiner please, that the union came into existence, the Independent Union of Falk Employees, which is here charged to be a company organization, which the company is here charged to have fostered and dominated, and to which it is charged to have

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contributed financial support, is the so-called Independent Union of Falk Employees that is the entity which we are bringing into today.

Trial Examiner Batten: My question was this. I rather gathered from your remarks that you took the position that the voluntary association or group of men who organized or started out to organize, that if that group had done anything, if the Falk Corporation had encouraged or fostered that group, that that unfair labor practice, if it exists, is not chargeable to the Independent Union of Falk Employees as a corporation.

Mr. Lamfrom: No, I don't make that point, Mr. Examiner. I do make this point: that if it were shown here that at the time or immediately prior to the time or after the time of the incorporation of the Independent Union of Falk Employees there had been some direct or indirect interference, domination, or contribution of financial support on the part of the Falk Corporation, that would make a clear case under the National Labor Relations Act of an unfair practice, but that inasmuch as the attitude of the Falk Corporation if it is condemned by the law, what they did or what they did not do to bring it within the purview of the so-called company union unfair practice section, if all of that is shown here is proof of something that the company could not have done or something that the company should have done, that is merely in the nature of events which preceded the formation of this institution, the Independent Union—

Trial Examiner Batten: No—

Mr. Lamfrom: May I finish, I just want to make myself—

Trial Examiner Batten: Here is the point that I was trying to make: it seems to me that you are distinguishing—

Mr. Lamfrom: No, I am not, I was going to try to make myself clear if I may.

Let us suppose on April 1st Mr. Harold Falk called in three employees, three of his employees and said to them, Now, boys, I want you to form an organization, I want you get together and get a union because the Falk Corporation wants to treat with a union of the type mentioned of its own employees, and I am going to contribute one hundred dollars to the formation of that union and its development."

Clearly, there would be no doubt that if that union was formed on that basis it would be in violation of the act.

Now, let's say that he had—let's say on April 15th 1935 the employees who had cooperated with him on that basis absolutely abandoned that sort of organization, had nothing more to do with it, and went out and without any interference or intervening influence on the part of the Falk Corporation, between April 1st, we will say, and April 15th, by their own volition, clearly as the evidence shows and it does not show anything to the contrary here, organized another corporation on an altogether different basis, I say that the only effect that can be given to the evidence, which is primarily to treat of the preliminary events to the formation of the corporation on April 15th, the only effect that can be given to that, that it is historical as the attitude of the company and the connection between the company and the men, but is of itself no adequate and sufficient proof; in other words, it is not shown that on April 15th the organization is a company union within the definition of the Act.

Now, have I made myself clear?

Trial Examiner Batten: I understand.

Mr. Lamfrom: That is somewhat different from the idea you thought I was making here.

Now, then, the next charge is that "by all of the above said acts—"

This running to the omnibus charge, the Kinch matter so-called, the Independent Union matter and the alleged refusal to bargain with the C. I. O. union.

1935 "That by all of the above said acts and each of them, the respondent did interfere with, restrain, coerce, and is interfering with, restraining and coercing its employees in the exercise of their rights guaranteed in Section 7 of the National Labor Relations Act, and by all of said acts and each of them did engage in and is now engaging in unfair labor practices within the meaning of Section 8, sub-section (1) of said Act.

"The activities of respondent set forth in paragraphs 6, 7, 8, 9 and 10 above occurring in connection with the operations of respondent described in paragraphs 1 and 2 above, have a close, intimate and substantial relationship to trade, traffic and conference," and so forth.

Now, I submit that if I am right on the three charges separately that I am right that the so-called omnibus count does not state anything that is proven, as far as being backed up by the evidence that has been introduced here to sustain any complaint against the Falk Corporation.

Therefore, I shall now move that both the petition and the complaint be dismissed.

Mr. Rissman: I will oppose that motion, if the Trial Examiner please, and point out that the petition filed by the Amalgamated Association of Iron, Steel and Tin Workers does specify the number of employees the union claims to represent, it does indicate the approximate number and total 1687 employees of the Falk Corporation, and the approximate number of employees the petitioner is entitled to represent if it does have a majority.

The complaint alleges the appropriate unit for bargaining and I think with the evidence we have and the statement stipulated to in the record the Board will be able to designate what is a proper unit for the purposes of collective bargaining.

The company has failed to bargain as indicated by the proof, not so much in the testimony here, but from the transcript of the meeting between the company and union representatives.

With respect to the objections made on the case of Anton Kinch, I disagree with Mr. Lamfrom and I state that the record points out that Mr. Kinch was discharged, not for the reasons given by the company, not for violating the company's rules, but he was discharged for the reason that he sought to collectively unite with other employees for the purpose of gaining a common advantage.

Mr. Lamfrom's unique argument as to the Independent Union of Falk Employees is entirely frivolous to my mind, or in trying to distinguish between a group of men who were unorganized and who were spoken to by Mr. Falk and the corporation both, as to advice, place of meeting and other matters, and the group finally developed from that a corporation known as the Independent Union of Falk Employees.

We cannot draw any fine line of distinction between that group that was incorporated on April 19th, I believe, and the group who sought to create that corporation around the 12th, 13th, 14th and 15th—we cannot draw the line because there is no line to be drawn and there is no distinction.

One day it was a group of men organizing, and naturally in the course of events they had no name, and two or three days later they had a name and charter, but it is still the same group, subjected to the same influences, the same domination and the same support.

The company after the incorporation withdrew support by telling the men they would have to meet off company property, but that is the only item of any encouragement withdrawn by the company.

It was to all intents and purposes to remain the same group of men.

I submit that the Board has proven the matters alleged in the complaint, and therefore the summation of the violations of the Act that Mr. Lamfrom read in the last paragraph of the complaint are proven and the complaint should stand.

Mr. Lamfrom: May I say, Mr. Examiner, that I would like to have it appear that the motion made to dismiss the complaint is in effect also several motions to dismiss in each case each charge that I indicated in my argument.

1689 Trial Examiner Batten: You mean with respect to the paragraphs you mentioned?

Mr. Lamfrom: Yes, the respective charges, that it will be considered a series of motions directed, as far as each of those motions are concerned, to each one of the charges.

Is that agreeable to you?

Mr. Rissman: It is not agreeable to me.

Mr. Lamfrom: Well, nothing is agreeable to you. I should not have asked that. I thought maybe on Monday, having been mellowed on Sunday, something might be agreeable to you.

Mr. Rissman: I object to each and every motion individually.

Trial Examiner Batten: The Examiner denies the motion for dismissal of the petition, and denies the motion for dismissal of the complaint and reserves his opinion as to the dismissal of the separate paragraph referred to by counsel.

Mr. Lamfrom: We will proceed?

Trial Examiner Batten: Yes.

Mr. Lamfrom: I understand, Mr. Examiner, under the practice here, that an exception follows as a matter of course?

Trial Examiner Batten: That is correct.

Mr. Lamfrom: Mr. Deuchars.

1690 LAWRENCE DEUCHARS a witness called by and on behalf of the respondent, being first duly sworn, was examined, and testified as follows:

Direct Examination.

Q. (By Mr. Engelhard) What is your full name?

A. Lawrence Deuchars.

Q. You are Scotch, aren't you?

A. Yes, sir.

Q. Well now, will you talk very plainly and clearly so that we can understand you, Mr. Deuchars?

A. Yes, sir.

Q. (By Trial Examiner Batten) How do you spell your last name, Mr. Deuchars?

A. I will try for you.

Q. (By Mr. Engelhard) Are you a little bit deaf?

A. Yes, sir.

Q. Do you want me to come up there? Can you hear me all right from where you are there?

A. I hear you now, yes.

Trial Examiner Batten: How does he spell his name?

Q. (By Mr. Engelhard) How do you spell your name? <

A. D-e-u-c-h-a-r-s.

Q. The first name is what?

A. Lawrence.

Q. By whom are you employed?

A. The Falk Corporation.

1691 Q. And in what capacity?

A. Foreman of erecting.

Q. How long have you been such foreman?

A. 14½ years, 14½ years.

Q. Who is your immediate superior?

A. My immediate superior is Mr. Henderson, William.

Q. What is his first name?

A. William.

Q. Is Mr. Henderson a foreman or is he superintendent?

A. Yes, he is actually superintendent of erecting.

Q. Of the erecting department?

A. Of the erecting department.

Q. What relation has Mr. Green to you?

A. Well, he is the superintendent of the machine shop, including our department, too.

Q. Is Mr. Green superior to Mr. Henderson?

A. Yes.

Q. In your department?

A. In my department, too, yes.

Q. Then as I understand it Mr. Green has a superintendent in the machine shop under him—I mean foremen in the machine shop under him?

A. Mr. Henderson is under Mr. Green.

Q. And you are under Mr. Henderson?

A. Yes.

1692 Q. Now, how old are you?

A. I am 43.

Q. Are you a married man?

A. Yes.

Q. Do you know Anton Kinch?

A. I do not get the question.

Q. I say, do you know Anton Kinch?

A. Yes, sir.

Q. How long have you known him?

A. Oh, since he was employed by the Falk Corporation, which may have been eight or nine years.

Q. That is, for any length of time that he was employed, you knew him?

A. Yes.

Q. Now, was he ever under your immediate jurisdiction, Mr. Deuchars?

A. On several occasions he was.

Q. Will you tell us how that happened that he was under your immediate jurisdiction?

A. Any time that Mr. Henderson was not at the shop, it was then that he was under my charge.

Q. Now, when he was under your immediate jurisdiction did you have occasion to observe what he did during working hours?

A. I didn't get the latter part of that question.

Mr. Engelhard: Would you read the question back 1693 to him, Mr. Reporter.

(The question was read.)

A. Oh, yes.

Q. (By Mr. Engelhard.) Did you have occasion to observe what he did while he was not working, but at the plant?

A. Not working but at the plant, no.

Q. Now, Mr. Deuchars, in the exercise of your jurisdic-

tion over Mr. Anton Kinch did you ever have occasion to reprimand him?

A. I did.

Q. You did?

A. Yes, sir.

Q. And what was the occasion for the reprimand?

Mr. Rissman: I object to the question. He may state any conversation he has had with Mr. Kinch, but the characterization of that conversation should appear from the conversation itself, and not from the question.

Trial Examiner Batten: What was the question?

(The question was read.)

The Witness: Well, I was standing by my—

Trial Examiner Batten: Just a moment.

The Witness: Pardon.

Trial Examiner Batten: I wonder, Mr. Engelhard, if you will first place the time as to this occasion that you are referring to.

1694 Q. (By Mr. Engelhard.) Will you state the time, Mr. Deuchars, when you had occasion to reprimand Mr. Kinch?

Mr. Rissman: I object to the question.

The Witness: Oh, I believe only on three occasions.

Trial Examiner Batten: The time, what year was it, and what month was it?

The Witness: That was probably the end of last year.

Q. (By Trial Examiner Batten.) When in the end of last year, December, November, or October?

A. It may have been either October or November, but I know one specific occasion was in December.

Q. When in December?

A. I couldn't tell you the exact date.

Trial Examiner Batten: All right; you may proceed, Mr. Engelhard.

Q. (By Mr. Engelhard.) Well, you stated that you had three different occasions when you had to reprimand Mr. Kinch?

A. Yes.

Q. Will you tell us what you said to Mr. Kinch?

A. Well, I don't recollect exactly what I said.

Q. Well, give us the substance of it. We realize you can't remember the exact words, but give us the substance of the conversation you had with Mr. Kinch.

A. Well, I was censored by my immediate superior, who was Mr. Green at that time.

1695 Mr. Rissman: I object and move the answer be stricken as not responsive.

Trial Examiner Batten: It may be stricken.

Q. (By Mr. Engelhard.) Well, before you answer the question I gave you, will you indicate to me how your attention was called to Mr. Kinch's activities?

Mr. Rissman: At what time?

Q. (By Mr. Engelhard.) At the plant during the months of October, November and December.

A. Well, I was having trouble in the shop.

Q. Well, were you called on the carpet by Mr. Green about the trouble in the shop?

Mr. Rissman: I object.

Mr. Engelhard: Let me finish my question and then you put in your objection.

Let's not get excited!

Mr. Rissman: I am not excited.

Mr. Engelhard: Let me finish my question and I will wait until you make your objection.

Trial Examiner Batten: Have you finished with your question?

Mr. Engelhard: Yes, I have finished the question.

Mr. Rissman: I object to the form of the question.

Trial Examiner Batten: Will you read it, please? I was listening for you to finish it; I didn't think you had fin-
1696 ished the question. Will you read the question, please,

Mr. Reporter?

(The question was read.)

The Witness: Yes.

Mr. Rissman: Just a minute.

Trial Examiner Batten: What is your objection?

Mr. Rissman: It is leading and suggestive, and in improper form.

Trial Examiner Batten: Well, I think the question is rather leading but you may answer.

Mr. Lamfrom: I think he has answered, he said yes.

Mr. Rissman: He has answered.

Trial Examiner Batten: Did you answer the question, Mr. Deuchars?

The Witness: Yes.

Q. (By Mr. Engelhard.) What was the trouble in the shop that you refer to?

Mr. Rissman: I object to that question. He has not referred to any trouble in the shop.

Trial Examiner Batten: I think there again, Mr. Engelhard, if you place the time of this conversation; in other words—

Mr. Engelhard: I am not asking for any conversation right now; I am asking him about the trouble in the shop.

Trial Examiner Batten: What was the question, 1697 please; will you read it, Mr. Reporter.

(The question was read.)

Trial Examiner Batten: I will sustain the objection. There is no evidence here to show there was any trouble.

Mr. Engelhard: Well, he testified he was called on the carpet because of trouble at the shop.

Mr. Rissman: He just answered, yes, in response to your question, that he was called on the carpet by Mr. Green.

Trial Examiner Batten: He answered yes, to the question that Mr. Green did call him on the carpet.

Mr. Engelhard: Will the reporter read back that question? (The record was re-read.)

Mr. Engelhard: He said "Yes", and now I asked him what was the trouble in the shop.

Trial Examiner Batten: Well, I still think, Mr. Engelhard, if he would repeat what Mr. Green told him, you will get the same thing because apparently it was what Mr. Green told him about the trouble, wasn't it?

Mr. Engelhard: I don't know whether it was Mr. Green who told him or whether or not he refers to trouble in the shop that caused Mr. Green to call him on the carpet; that is what I am trying to get at.

Q. (By Mr. Engelhard.) Mr. Deuchars, following the suggestion of the Trial Examiner, will you indicate what 1698 Mr. Green said to you when he called you on the carpet?

A. Well, he objected to Mr. Kinch being in different departments for one thing, and he also objected to the men standing in groups in the shop when they should be working, discussing this petition that Mr. Kinch sent around through the shop.

Mr. Rissman: May we have the date, please?

Q. (By Mr. Engelhard.) Can you fix the date of that, Mr. Deuchars?

A. Not any exact date, no.

Q. Well, can you fix it as to the month in which this occurred?

A. It was December some time.

Q. What did you do after Mr. Green talked to you about Mr. Kinch's activities?

A. Well, I discussed the petition with Mr. Kinch at some length; I think I said something to him at that time, he was rather short—I said to him that he was probably treading on dangerous ground by circulating this petition.

Q. What did Mr. Kinch say to you?

A. Pardon?

Q. Did you hear my question?

A. No.

Q. What did Mr. Kinch say to you?

A. Well, one of the things he did say to me was that he had some scheme whereby he wouldn't have to be dependent on the Falk Corporation for support after about two or three months, and by that he meant that he would probably be leaving their employment.

Mr. Rissman: I object and move that the last part be stricken as a conclusion.

Trial Examiner Batten: It may be stricken.

Q. (By Mr. Engelhard.) Mr. Deuchars, had—after you had talked to Mr. Kinch about circulating this petition what did Mr. Kinch do then?

A. I don't know exactly what he done, but I know the trouble in the shop still kept going on.

Q. What was this trouble in the shop that you are referring to?

A. Well, I was not getting production.

Q. Why weren't you getting production?

A. Because the men were busy employed talking about this petition, as to the merits or demerits of it.

Q. You may state whether or not you warned Mr. Kinch to stay away from your department?

Do you hear that question?

A. Yes. You mean—will you say that again?

Mr. Engelhard: Read the question back to him, Mr. Reporter.

(The question was read.)

A. I had no occasion to do that, he was in my department.

1700 Q. (By Mr. Engelhard) Had you occasion—you

may state whether or not you had warned Mr. Kinch to stay away from other departments?

A. I did not that one occasion, yes.

Q. What did you say to Mr. Kinch?

A. Well, I just talked in a friendly manner as far as I remember.

Q. What did you say to him?

A. Well, I think the question of this petition came up, I think the discussion was about this petition he had.

Q. Well, what was said between you and Mr. Kinch about the petition?

A. Oh, he argued about its merits, that was all, and I probably took the other side.

Q. Well, did you in that conversation with Mr. Kinch give him any instructions as to what he should do or he should not do?

A. Well, I think if I remember correctly, that I advised him as to the proper procedure with such a petition, something such as that.

Q. What did you advise him to do?

A. Well, I advised him to go to management with it.

Q. What did you advise him as to—as respects his attitude among the men as regards that petition?

A. Well, I think I said something about, that it was 1701 disturbing the morale of the shop.

Q. Well, did you instruct him as to whether he should continue with the petition, or discontinue with the petition?

A. I believe I did.

Q. Do you know whether you did or not?

A. Well, I had a lot of things on my mind at that time, and I don't recall particularly the exact words that were said.

Q. Well now, after you talked to Mr. Kinch the first time you may state whether or not he continued with his efforts in discussing the petition with the men?

Mr. Rissman: I object.

Trial Examiner Batten: Now, Mr. Engelhard, I will have to object to that because there is no testimony given here yet—I don't know whether he is testifying as to his first, second or third conversation.

1702 Now, your question implies that in the first conversation this man had with Mr. Kinch he told him to discontinue this practice.

Now, I don't know whether the only conversation as to this was the first one, the second one, or the third one; I haven't the faintest idea.

Mr. Engelhard: We will try to clear that up.

Mr. Rissman: Further I wish to point out that all we know about this conversation is that it occurred some time in December.

Trial Examiner Batten: I am not concerned about that; I am concerned about the three conversations and I have only heard about one.

Q. (By Mr. Engelhard) Mr. Deuchars, you have testified before that you had three conversations with Mr. Kinch. Now, is that correct?

A. Three that I know of, yes.

Q. Now, what was your first conversation with Mr. Kinch?

A. Well, I think we discussed the merit of this petition.

Mr. Rissman: May we have the time and place, please?

Q. (By Mr. Engelhard) Give us approximately the time and place when this occurred, if you don't know definitely?

A. It occurred in the shop; I don't know the date, I mean I had no occasion to put down any dates.

Mr. Rissman: Tell us what month it was.

1703 Q. (By Mr. Engelhard.) Do you know what month it was?

A. I know it was December, because I was in charge of the shop at that particular date.

Q. Did all three conversations you referred to occur in December, in the month of December?

A. I think so, yes.

Q. Now, what was your second conversation with Mr. Kinch?

A. Well, it was after the time I was censured by the superintendent for his being in a different department.

Q. What did you say to Mr. Kinch in your second conversation, and what did he say to you?

A. Well, I don't recollect exactly what we said.

Q. Then you said you had a third conversation with Mr. Kinch.

A. Yes.

Q. What did he say and what did you say in that third conversation?

A. Well, it happened that one of the men came to me one

day and said that another guy in the shop had threatened him because he didn't sign this petition.

Mr. Rissman: I object to that question.

The Witness: (Continuing.) And I—

Mr. Rissman: Just a minute.

Trial Examiner Batten: Let him finish.

Mr. Rissman: I am sorry, I thought he was finished.
1704 Go ahead.

Q. (By Mr. Engelhard.) Go ahead with your testimony.

A. Well, they threatened each other with a fist fight, they were going to fight. So I think at that time Mr. Kinch and I talked.

Mr. Rissman: I move the answer be stricken as being second-hand and third-hand hearsay. He is unable to recall the date of the conversation, the men with whom he had it, or who was involved.

Trial Examiner Batten: Mr. Engelhard, I wonder if you will ask the witness if Kinch was present at this disturbance.

Q. (By Mr. Engelhard.) Well, was Mr. Kinch present—

Trial Examiner Batten: I understand he said they threatened to fight.

Q. (By Trial Examiner Batten.) Was Mr. Kinch present at this time where you thought they were going to fight, was Mr. Kinch himself present?

A. He was in the shop.

Q. Was he there where the disturbance took place, where you thought there was going to be an argument, was Mr. Kinch there?

A. No, but the argument was about him.

Q. Yes, but Mr. Kinch was not there?

A. No, he was not there.

Trial Examiner Batten: The answer may stand.


1705 Q. (By Mr. Engelhard.) What did you say to Mr. Kinch after this other man had talked to you?

A. As I said before, Mr. Kinch and I were always on friendly terms, we discussed any matter at all. Whatever I may have said, exactly I don't know; I just talked to him in general, that was all, in the shop.

Q. Well, after Mr. Green talked to you about Mr. Kinch, what did you do? When you talked to Mr. Kinch, did you tell him what Mr. Green had said?

A. I did tell him what Mr. Green had said.

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Q. Did you give Mr. Kinch any instructions as to what he should do in the future?

A. Yes.

Q. What was—what were those instructions that you gave Mr. Kinch?

A. Well, in a general way it would be the usual talk that I give to anybody when they disobey orders.

Q. What did you say to Mr. Kinch? Tell us what you said to him.

A. Well, as I said before, I don't remember the exact conversation.

Q. Well, what was the substance of the conversation?

A. Well, the substance was that he should obey the shop rules.

Q. Did he follow those instructions?

1706 A. Well, he may have after that.

Q. Do you know whether he did?

A. Pardon?

Q. Do you know whether he did?

A. As I said before, the trouble still went on in the shop.

Q. And by that trouble you mean that there was a falling off in production?

A. Yes.

Mr. Engelhard: That is all.

Cross-Examination.

Q. (By Mr. Rissman) You said, Mr. Deuchars, that you were Mr. Kinch's superior whenever Mr. Henderson was absent.

A. Yes.

Q. Was Mr. Henderson absent in the month of October 1936?

A. October?

Q. Yes.

A. I could not say that.

Q. Was he absent in the month of November, 1936?

A. For about a week, yes.

Q. Was he absent in the month of December, 1936?

A. Yes.

Q. For how long?

A. For about two weeks I think.

Q. Now, all of the conversations that you had with Mr.

Kinch was after Mr. Green talked—was after Mr. Green
1707 called you on the carpet?

Oh, no.

Q. Was there any conversation with him before you were
called on the carpet?

A. There was conversation.

Q. What was that conversation with him?

A. Well, it was relative to the different shop problems
as affected him and affected me.

Q. Well, on those occasions, did you have—was it necessary
for you to know the things he was doing outside of his
regular work for, or were they just ordinary discussions
about problems in the shop?

A. Just ordinary discussions, yes, sir.

Q. You testified that in discussing the petition with Mr.
Kinch you told him he was treading on dangerous ground by
circulating the petition.

A. Yes.

Q. Do you recall that testimony?

A. Yes, sir.

Q. What did you mean by that, Mr. Deuchars?

A. Well, Mr. Kinch, when he was hired in the shop, he
knew the rules and regulations of the shop, and he knew
when he circulated that petition that he was breaking those
rules.

Q. He was a member of the Works Council, wasn't he?

A. Yes.

1708 Q. And as a member of the Works Council it was
necessary for him to talk to the employees, wasn't it?

A. Well, in that capacity, yes, sir.

Q. What rule of the shop was he breaking when he circulated
the petition?

A. All over the machine shop as far as I know.

Q. What rule of the shop was being broken?

A. Pardon?

Q. What shop rule was being broken by the circulation of
the petition?

A. Well, the fact that it was circulated during work hours
was breaking the rules.

Q. Is there a rule in the shop that no petitions can be circulated
during work hours?

A. I guess there is.

Q. Well, is there?

A. Yes.

Q. Is it posted on the wall?

A. No, it is not posted on the wall.

Q. Did you ever tell Mr. Kinch that?

A. Yes, sir.

Q. When did you tell him that?

A. Well, as I say, I ain't acquainted with the dates at all.

Q. Did you tell him before or after you saw the petition going around?

1709 A. After.

Q. So before the petition went around you never told Mr. Kinch that there was a rule that prohibits that, did you?

A. Yes, that was the gist of my conversation.

Q. I say, before that conversation you never told him it was against the rules to circulate a petition?

A. No, I can't say that I did.

Q. Does the company publish its rules in a little booklet?

A. Our rules of employment are explained to a man when he starts in the place first.

Q. Do you know if the rules were ever explained to Mr. Kinch?

A. I don't just quite get that question.

Mr. Rissman: Will you read the question please?

(The question was read.)

The Witness: No, I don't.

Q. (By Mr. Rissman) When Mr. Green called you on the carpet, tell us just what he said about Mr. Kinch's petition?

A. Oh, I don't think he knew about the petition at that time.

Q. What did he call you on the carpet for?

A. There was a petition, and Mr. Green called me on the carpet for Mr. Kinch being in a different department from where he was supposed to work.

Q. When you say Mr. Kinch was circulating a petition, what do you mean?

1710 A. Well, he went around and personally solicited the different men in the shop.

Q. Did you see him do that?

A. Yes.

Q. When did you see him do that?

A. Some time in December.

Q. In December you saw him circulating a petition. Was it the beginning of the month or the end of the month?

A. Oh, I don't know; I don't really know, I couldn't give you a definite date on it.

Q. What time of day did you see him circulating it?

A. Oh, it happened on several occasions.

Q. What time of day on any occasion?

A. In the forenoon and afternoon.

Q. Pardon?

A. I would say it was in the forenoon and afternoon.

Q. Do you know if it was before Mr. Kinch was supposed to come to work or after he was supposed to come to work?

A. It was during working hours.

Q. During his working hours?

A. Yes.

Mr. Lamfrom: I don't think the reporter got your answer. You just shook your head:

Trial Examiner Batten: You will have to speak out.

The Witness: This is the second time I have been in 1711 court.

Trial Examiner Batten: I am saying so because the reporter cannot get your answer when you shake your head, when you shake your head the reporter can't get it.

Mr. Lamfrom: You will have to speak out.

Mr. Engelhard: Will you read the last question and answer?

(The record was read.)

Trial Examiner Batten: Now, in order to clear up a matter with respect to Mr. Lamfrom's motion, as I understand the separate motions, Mr. Lamfrom, you first move to dismiss the charges in the complaint as to the appropriate unit, as stated in the complaint.

Mr. Lamfrom: Correct.

Trial Examiner Batten: And secondly, you ask for a dismissal as to the allegations in the complaint of a majority.

Mr. Lamfrom: Correct.

Trial Examiner Batten: And third, you move to dismiss that part of the complaint which refers to the refusal of the respondent to bargain.

Mr. Lamfrom: Correct.

Trial Examiner Batten: And fourth, you move to dismiss with respect to the charges in the complaint as to Anton Kinch.

1712 Mr. Lamfrom: Correct.

Trial Examiner Batten: And fourth, you move to dismiss—

Mr. Lamfrom: Isn't that fifth?

Trial Examiner Batten: Or fifth, you move to dismiss as

to that part of the complaint which refers to the domination and so forth of the corporation with respect to the Independent Union of Falk Employees.

Mr. Lamfrom: Correct as to that one.

Trial Examiner Batten: And sixth, you move to dismiss as to the—or sixth, rather, you move to dismiss as to paragraph 12 which refers to all the unfair labor practices under Section 8, Subdivisions 1, 2, 3 and 5, as it affects commerce.

Mr. Lamfrom: Well, the last motion, Motion No. 6, I think it is, also includes the allegations in paragraph 10, "by all of the above said acts, and each of them."

Trial Examiner Batten: That would include then, paragraphs 10, 11 and 12, those are the commerce paragraphs.

Mr. Lamfrom: Yes, that is right.

Trial Examiner Batten: Now, as I understand it that covers the six separate motions referred to in your motion to dismiss.

Mr. Lamfrom: There are really eight motions. The first one was to dismiss the petition, and the second one to dismiss the complaint, and the third one was to dismiss the specific charges in the complaint covered by the six separate motions.

Is that clear?

Trial Examiner Batten: Yes. I just wanted to be sure that I understood it, so that we didn't find ourselves at the finish here with some motions undisposed of.

You need not put this in the record:

(Discussion outside the record.)

Trial Examiner Batten: All right, let's proceed.

Mr. Rissman: May I have the last question and answer read please?

(The record was again read.)

Q. (By Mr. Rissman) You have testified, Mr. Deuchars, that the trouble in the shop was—the trouble in the shop was that you were not getting the production:

A. Yes.

Q. Is that right?

A. Yes.

Q. How do you know that? Did you keep any production records?

A. Sure, that is a part of my duties.

Q. What production records did you find were falling off?

A. Well, I would say that it fell off at least 20 per cent, off of usual.

Q. What investigation did you make to find out the cause of the falling off in production?

1714 A. Well, I butted in the different conversations in the shop that the boys were having, and I knew that they were discussing this petition.

Q. One of the reasons for the falling off of production was the conversations the men were having?

A. Yes, instead of working.

Q. Were there any other reasons for the falling off of production?

A. Well, because there was dissension in the shop, lack of harmony.

Q. Dissension among the men?

A. Among the men.

Q. This was in the month of December?

A. Correct.

Q. And you discussed with Mr. Kinch the merits and demerits of his plan?

A. Yes.

Q. And you said you took the other side of it.

A. I did, on the grounds that I thought it was—

Q. Did you ever discuss—

Mr. Lamfrom: Let him finish.

Q. (By Mr. Rissman) Finish your answer.

A. What?

Q. Finish your answer.

1715 A. I did, on the grounds that it was against the rules of the shop.

Q. Did you ever discuss the merits and demerits of the plan with Mr. Green?

A. No.

Q. Or with Mr. Henderson?

A. No.

Q. Just with Mr. Kinch.

A. Mr. Kinch.

Q. What merits or demerits of the plan were against the shop rules?

A. Well, the actual circulation of the petition was against the shop rules.

Q. What merits or demerits of the plan itself were against the shop rules?

A. Well, the method of his plan, to change the method of rates per hour.

Q. How was that against the shop rules?

A. Because we have a set of stated rules of our own.

Q. What plant rule did the merits or demerits of the plan violate?

A. Well, it violated the method of—it violated the method that we have employed for figuring a guy's work.

Q. How did it violate the method?

A. Because his plan was that he should have something to do with the setting of a man's rate, and the inspector 1716 should be one of the three that was supposed to set a particular man's rate per hour.

Q. And that part of the plan was objectionable to the company's rules and methods, is that right?

A. What?

Q. That part of the plan was objectionable to the company's methods.

A. In my opinion, yes.

Q. How long have you been an assistant foreman, Mr. Deuchars?

A. About seven years.

Q. And in that seven years can you recall if you ever had talked to any employees about circulating petitions in the plant?

A. We never had that experience before.

Q. Wasn't it ever necessary for you to and did you ever tell any employee that it was against the rules to circulate a petition?

A. I never had occasion to until this time.

Q. When did you first learn that it was against the rules?

A. I knew the rules as explained to me when I started there.

Q. Who explained them to you?

A. I can't explain them in detail.

Q. Who explained them to you?

A. The foreman who hired me.

1717 Q. And what did he say were the rules?

A. You mean pertaining to the—

Q. Pertaining to the plant.

A. Well, he explained the safety rules, and he explained how I should conduct myself in the shop.

Q. What did he explain about how you should conduct yourself in the shop?

A. Well, I don't know exactly how to answer that. I mean, as I said before, explained the regulations.

Q. Do you recall any of the regulations he explained to you?

A. One of them was that he had to have discipline in the shop.

Q. What else did he explain to you?

A. I don't recall what the others were.

Q. Are you acquainted with the constitution of the Works Council?

A. I never had anything to do with the Works Council.

Q. Are you acquainted with any of its rules and regulations?

A. I have read them over.

Q. Before this petition of Mr. Kinch, did you ever see any petition circulated in the shop at all?

A. Not to my knowledge.

Q. Did you ever see any petition circulated for the nomination of officers of the Works Council?

1718 A. I have seen notices on the bulletin board.

Q. Have you ever seen any petition circulated in the shop in connection with the Works Council?

A. No.

Q. Do you know whether or not the members of the Works Council had any right to circulate petitions?

A. I don't think they did.

Q. Do you know?

A. I don't know.

Q. If the rules of the Works Council say that they have, that would be contrary to your knowledge, wouldn't it?

A. I suppose.

Q. You did not hire Mr. Kinch, did you?

A. No.

Q. Do you know who hired him?

A. Mr. Henderson did I think; In fact, I know he did.

Q. Do you know if Mr. Henderson ever told Mr. Kinch it was against the rules of the shop for a member of the Works Council to circulate a petition?

A. I could not say.

Q. You never told Mr. Kinch that, did you?

A. What?

Q. You never told Mr. Kinch before Mr. Green called you on the carpet that it was against the rules of the company to circulate a petition?

719 A. I did.

Q. Before Mr. Green called you on the carpet?

A. Yes.

Q. How long before?

A. I don't really know; it may have been a week or two weeks.

Q. Did you ever tell Mr. Kinch that before you saw the petition going around?

A. No.

Q. How long before December did you notice that there was trouble in the shop?

A. Oh, I would say a month before.

Q. What did you do about it?

A. Well, I reported it to my superior.

Q. What did you report to him?

A. I reported to Mr. Green I wasn't getting the production, it was starting to fall off.

Q. Did you tell him why?

A. I told him why?

Q. What did Mr. Green say?

A. Well, we tried to eliminate the source.

Q. Did Mr. Green say that?

A. No, I tried to find out myself.

Q. What did Mr. Green say?

A. Well, he told me to keep a closer watch of the men.

1720 Q. About how many men would you say were engaged in discussing these plans and petitions?

A. About 60.

Q. Were there any others discharged?

A. No. That last question you asked, you asked how many were engaged in the actual circulation, was that the question?

Q. You answered the question.

Mr. Lamfrom: The witness being doubtful as to the question, suppose the question be repeated to him.

Mr. Rissman: He can have it read.

Mr. Lamfrom: Will the reporter repeat the question?

(The question was read.)

Q. (By Mr. Rissman) Is that the way you understood the question before?

A. I didn't understand the question.

Q. Well, I will ask you again, how many men were engaged in discussing these plans and petition?

A. I would say the whole shop.

Q. Well, when you said about 60, what did you have reference to?

A. Well, that was about the number of men we have in the shop.

Q. When you say the whole shop, you are limiting it to the Erecting Department?

- A. Yes, they discussed it pro and con.
- 1721 Q. When you say the whole shop, you mean about sixty employees?
- A. Yes, sir.
- Q. You don't mean all of the employees employed at The Falk Corporation?
- A. No, just in our immediate department.
- Q. How many men were engaged in circulating these petitions, do you know?
- A. Well, to the best of my knowledge there were four.
- Q. Were any of the others discharged or fired?
- A. No, one of them quit.
- Q. Well, were any of them discharged?
- A. No, none of them discharged.
- Mr. Rissman: That is all.

Redirect Examination.

- Q. (By Mr. Engelhard) Who were the four men who were circulating petitions?
- Did you hear that question, did you hear my question?
- The Witness: I didn't get that.
- Mr. Engelhard: Will the reporter read the question, please.
- (The question was read.)
- A. Mr. Kinch was one, Mr. Ritchie, Mr. Gruett—
- Mr. Rissman: Who?
- The Witness: Mr. Gruett, and there was a Mr. Feilbach.
- 1722 Q. (By Mr. Engelhard) Were those men in your department?
- A. Yes, sir.
- Q. How often did you see Mr. Kinch circulating the petition?
- A. I didn't quite get that question.
- Q. How often did you see Mr. Kinch circulating the petition?
- A. I would say about three times.
- Q. What did he do when he circulated the petition?
- A. Well, I told him to stay on his job.
- Q. Mr. Deuchars, did you hear my question?
- A. I didn't get it exactly, no.
- Mr. Engelhard: Will the reporter please read the question?
- (The question was read.):

A. Well, he went and solicited various men in the shop to get their signatures to the petition.

Q. (By Mr. Engelhard) Did he have the petition in his hand?

A. Yes.

Q. What did he do?

A. Well, he went and talked with various individuals and asked them to sign their name if they were in favor of it.

Q. You said you saw him do that three times.

A. Yes, sir.

Q. That was during working hours.

A. Yes.

1723 Q. Whose working hours?

A. His regular working hours.

Q. How about the men?

A. Their working hours too.

Q. Were these three occasions—were the three occasions when you saw Mr. Kinch circulating the petition before or after Mr. Green talked to you?

A. I believe one of the times, it was before Mr. Green talked to me.

Q. And the other two were after?

A. Yes.

Q. What did you do about it?

A. Well, I told him to stay on the job.

Q. To whom did you say that?

A. Mr. Kinch.

Q. And did he thereafter?

A. He did not.

Q. Did you speak to him again?

A. I believe I did, yes.

Q. What did he say when you told him to stay on the job?

A. Well, he argued about the merits—he figured he was justified in doing it.

Mr. Engelhard: That is all.

Recross Examination.

1724 Q. (By Mr. Rissman) Mr. Deuchars, did you ever see Mr. Ritchie, Mr. Gruett, and Mr. Feilbach circulating petitions?

A. Yes.

Q. What were they doing? What did you see them doing?

A. Well, they were getting two or three fellows together and talking it over.

Q. Were they walking around with the petition in their hands?

A. Yes.

Q. What did you see them do?

A. In the shop.

Q. What did you see them do?

A. Well, I saw them standing in groups.

Q. They were doing about the same thing that Mr. Kinch was doing?

A. Yes.

Q. You say that you saw Mr. Kinch go to the men with this petition?

A. Yes.

Q. And do you know what conversation took place between them?

A. I wasn't in the conversation.

Q. You never heard him, did you?

A. No.

Q. Why did you say he asked them to sign their names?

A. Because I saw them signing their names.

1725 Q. Do you know if he asked them to sign it or if they asked him if they could sign it?

A. That I don't know.

Q. Who were some of the people you saw do that?

A. Well, I saw Mr. Schultz and Mr. Simpson.

Q. Did you ever talk to Mr. Schultz about it after that?

A. I don't know.

Q. Did you ever talk to Mr. Simpson about it?

A. No.

Q. Did you—did they ever talk to you about it?

A. No.

Q. Will you answer louder, so that the reporter can get it, please? Speak your answers right out.

Did you ever see anybody else?

A. No, I can't say I did.

Q. You said you saw Mr. Kinch do that three times?

A. Yes.

Q. Was it all on the same day?

A. No.

Q. Three different days?

A. Yes, sir.

Q. When did you see him talking to Mr. Schultz?

A. I can't recollect the day it was at all.

Q. But one of the days you saw him talking to Mr. Schultz?

A. Yes.

1726 Q. Where was that conversation?

A. I didn't get that.

Q. Where did you see Mr. Kinch talking to Mr. Schultz?

A. In the shop.

Q. In the shop?

A. Yes.

Q. What time of day was it?

A. Before noon.

Q. Pardon?

A. Before noon.

Q. Where were they, at Mr. Kinch's bench or machine?

A. At Schultz' bench.

Q. At Mr. Schultz' bench?

A. Yes.

Q. What kind of work did Mr. Schultz do?

A. Well, he prepares the units for the assembly floor.

Q. How far away is Mr. Schultz' place of work from Mr. Kinch's?

A. About 30 or 40 yards.

Q. Did you go to Mr. Schultz and Mr. Kinch and talk to them at that time?

A. No.

Q. Why not? Did you hear the last question?

A. No, I didn't.

Mr. Rissman: Will you read the question please.

1727 (The question was read.)

The Witness: No, I didn't.

Q. (By Mr. Rissman) But they were violating the rules of the company, weren't they?

A. Yes.

Q. And you didn't talk to them about it?

A. I happened to be busy at the time, and I didn't.

Q. How did you happen to see them?

A. Because I was down in that part of the shop.

Q. Did you speak to Mr. Schultz about it after that?

A. No, I didn't.

Q. Do you know where Mr. Kinch's tool drawer is or was?

A. Yes.

Q. Where was his tool drawer?

A. In the middle of the shop.

Q. And how far was his tool drawer from this place where you saw the conversation between him and Mr. Schultz?

A. Well, I would say it was about 20 or 30 yards.

Q. From where the conversation was?

A. Yes.

Q. How long was Mr. Schultz talking to Mr. Kinch?

A. Oh, about 15 minutes.

Q. Pardon?

A. About 15 minutes.

Q. You saw them the entire time?

1728 A. I saw them the entire time that day.

Q. During the entire fifteen minutes you didn't go over and tell them to go back to work?

A. Not on that particular occasion.

Q. Well, when did you tell them?

A. I had to reason to butt into another conversation had—

Q. We are talking about this one day when you saw Mr. Schultz and Mr. Kinch.

Mr. Lamfrom: You are asking why he didn't and he was explaining to you why he didn't. Won't you let him finish that?

You were saying something that you had butted into another conversation: Finish that, will you?

The Witness: Will you repeat the question?

Mr. Rissman: Read the question please.

(The question was read.)

Q. (By Mr. Rissman) A conversation between Mr. Kinch and Mr. Schultz?

A. No, a conversation between Mr. Kinch and Mr. Lund.

Q. At this time when Mr. Kinch was talking to Mr. Schultz—

A. Yes.

Q. —you did not talk to the two men and tell them—

A. No, this was a different occasion, I am talking about now.

Q. Did Mr. Kinch ever work with Mr. Schultz?

1729 A. Not at that time, no.

Q. Did he ever work with him?

A. He did, yes.

Q. How did he work with him?

A. Oh, when he first started with the company.

Q. When was the last time he worked with Mr. Schultz?

A. Oh, about a year and a half ago, maybe two years ago.

Q. How long before this time that you saw them?

A. I couldn't say.

Q. Do you know where Mr. Schultz kept his tool box or tool drawer?

A. Yes.

Q. Where was that with respect to Mr. Kinch's tool drawer?

A. It may have been at the same bench.

Q. You know it was.

A. What?

Q. You know it was—you know that both the tool drawers were in the same bench, don't you?

A. No, I don't.

Q. Where was Mr. Schultz' tool drawer?

A. I didn't get that.

Mr. Bissman: Will you read the question please.

(The question was read.)

A. Well, I don't know the exact location of it; it was bound to be over where he was working, but the exact location, I
1730 don't just know.

Q. You say it may be at the same bench with Mr. Kinch?

A. It may be, yes.

Q. You have testified that when you spoke to Mr. Kinch about it he told you that he was justified in circulating the petition.

A. Yes.

Q. You recall that?

A. Yes, he figured he was justified.

Q. Can you tell us what he did when he told you that, the reasons he gave you?

A. I couldn't say exactly what he said.

Q. In substance.

A. Just the substance of what he said—

Q. What was the substance of it?

A. Well, the substance was that he intended to change the wage rates of the shop.

Q. Didn't he in substance tell you he felt he had a right to do these things, to have these petitions circulated because he was a member of the Works Council and had to contact the men?

A. I believe he did,—I believe he had the right to contact the men, but not to do so like he was, he wasn't supposed to do it in working hours.

Q. Didn't Mr. Kinch tell you that he believed he was justified in having this petition circulated because it was
1731 one of his duties as a member of the Works Council? Wasn't that in substance what he told you?

A. I didn't understand it that way, no.

Q. What did you understand?

A. I thought it was just his own pet idea.

Q. What were the reasons he gave when he said he was justified in doing it?

A. Well, he said that he spent a lot of time figuring this thing out, and he probably figured himself he was doing the work.

Mr. Rissman: I move the last part of the answer be stricken out.

Trial Examiner Batten: It may stand. I think there are a lot of other things in there that are not particularly important.

Q. (By Mr. Rissman) Do you know if at this time you had the conversation with Mr. Kinch, whether or not he had spoken to Mr. Falk about this petition, or plan?

A. As far as I understand from his conversation, Mr. Falk informed him that he should have come to the management with the petition—with the idea before it became a petition at all; I mean before it was circulated in the shop.

Q. So you knew that Mr. Falk had discussed this idea with Mr. Kinch?

1732 A. I think I did.

Mr. Rissman: That is all.

Mr. Lamfrom: That is all.

Trial Examiner Batten: Mr. Clark?

Mr. Clark: I have no questions.

Trial Examiner Batten: That is all.

(Witness excused.)

Mr. Engelhard: There is just one question I want to ask Mr. Deuchars. It is not necessary for him to take the stand for that; and that is: When Mr. Kinch had the conversation with Mr. Schultz, did he have a petition with him?

Mr. Deuchars: Yes.

Mr. Engelhard: That is all.

Trial Examiner Batten: All right.

Mr. Engelhard: Mr. Ramsey.

JAMES HOWE RAMSAY, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Engelhard) What is your full name, please, Mr. Ramsey?

A. James Howe Ramsay.

Q. And how old are you?

A. 33.

Q. By whom are you employed?

1733 A. By the Falk Corporation.

Q. How long have you been employed by the Falk Corporation?

A. About two years.

Q. Prior to your employment by the Falk Corporation, where were you employed?

A. Pabst Brewery.

Q. And in what capacity were you employed at the Pabst Brewery?

A. I was working in the bottle house.

Q. When you became employed by The Falk Corporation, what was your work as a beginner?

A. I was working in the erecting department as a machinist.

Q. In the erecting department?

A. Yes.

Q. Where had you learned your machinist trade?

A. In Scotland.

Q. How long have you been in America?

A. I came here in 1927.

Q. How many years apprentice did you serve as a machinist?

A. I served five years as an apprentice and one year as an improver, six years all together.

Q. (By Trial Examiner Batten) Are you a citizen of the United States?

A. No, I am not.

Q. (By Mr. Engelhard) You say five years as an ap-
1734 prentice and one year as what?

A. Improver?

Q. How?

A. Improver.

Q. Is that the term you use in Scotland before they used machinists?

A. That is before you are considered a journeyman, you work one year; you serve five years as an apprentice, before you can serve as a journeyman.

Q. So that you must have six years experience and training before you can become a journeyman in Scotland.

A. Yes, sir.

Q. And you had five years work as an apprentice?

A. Yes, sir.

Q. But you did not put in the one year as improver?

A. Oh, yes, I put in that year.

Q. How many years did you work at the machinist trade after you put in the one year as improver?

A. Well, I worked right up until I came here in 1927; I guess I worked about 14 years all together in the trade, probably more.

Q. That included your apprenticeship?

A. Yes.

Q. About 14 years.

A. Yes.

1735 Q. I take it then that you became an employee of the Falk Corporation in 1935.

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. About what month of that year?

A. Well, it was after Labor Day.

Q. September 1935?

A. About that, I am not quite sure, I couldn't be specific about the time.

Q. I assume that your employment with the Pabst Brewing Company was merely temporary employment?

A. It was.

Q. Until you could get a job.

A. At my trade.

Q. In your trade.

A. Yes.

Q. Now, when you were working for the Falk Corporation since September 1935 had you been working in the erecting exclusively?

A. Yes, sir.

Q. What was the nature of your work?

A. Well, I build or assemble a reduction unit, speed reducer, they call it.

Q. And after they are assembled and set up where the purchaser wants them set up, do you service them?

1736 A. Sometimes I do, occasionally I go out on the job.

Q. You had occasion just the other day to go to Chicago?

A. Yes, sir.

Q. To service one of these.

A. I was down there for two weeks.

Q. You watch them run?

A. Yes.

Q. That is, you watched them run?

A. Yes, I did.

Q. And if there is any adjustment that needs to be done, you do it?

A. Yes, sir.

Trial Examiner Batten: Mr. Engelhard, I am wondering from your line of questioning, do you want to qualify this man as an expert?

Mr. Engelhard: No, I am trying to get what his type of work is.

Trial Examiner Batten: I thought perhaps you were qualifying him as an expert.

Mr. Engelhard: No, I am not qualifying him as an expert.

Trial Examiner Batten: All right.

Q. (By Mr. Engelhard) Mr. Ramsay, during the time you were working at the Falk Corporation, had you any occasion to contact Mr. Kinch?

1737 A. Yes.

Q. In connection with what?

A. Well, not in connection with anything in particular, everything in general. I spoke to the man because I liked him as a man.

Q. Did he contact you from time to time?

A. Oh, yes.

Q. When?

A. Well, any time during the day, if I passed by his bench I would say, "Hello, Tony," or maybe ask him the time of the day or anything like that.

Q. Did you ever have any occasion to discuss with him a petition?

A. Yes.

Q. When was that?

A. I think it was in the latter part of November.

Q. And where was it that you had the discussion?

A. In the shop.

Q. And at what time, before or after working hours or during working hours?

A. It was during working hours when I spoke to him.

Q. And how did the occasion arise for you to talk with Mr. Kinch about the petition?

A. Well, one of the guys in the shop asked me why I didn't sign the petition, and I told him that judging from the conversation in the shop that my views didn't coincide
1738 with the views of the petition.

Q. Well, that was the conversation you had with someone else. I am asking you what conversation you had with Mr. Kinch about the petition?

A. Well, just the same thing; I told him I didn't sign the petition because I didn't think it was a proper set-up; I didn't like the idea that the—some of the ideas that he has specified in the petition.

Q. Where was this conversation—where were you and Mr. Kinch at the time you had this conversation about the petition?

A. At Mr. Kinch's bench.

Q. Had you gone over to his bench to talk to him about the petition?

A. I was passing by there and I spoke to him about it, yes.

Q. Well, did you volunteer to speak to him, or did he ask you to speak to him?

A. I volunteered to talk to him.

Q. At that time did you sign the petition or did you refuse to sign the petition?

A. I refused to sign the petition.

Q. Then what happened thereafter?

A. Well, that fellow that asked me to sign the petition started swearing and calling me names and I invited him outside to fight.

1739 Q. Who was this man?

A. Bob Ritchie.

Q. Do you know whether or not he was circulating that petition also?

A. No, I couldn't say, he was speaking to me about it, but I don't know whether he was actually circulating it or not.

Q. Who was Bob Ritchie, a fellow worker?

Mr. Rissman: May I have the last question and answer read please?

(The record was read.)

Q. (By Mr. Engelhard) Where did this conversation that you and Mr. Ritchie had take place?

A. It took place practically at the door of the stock room.

Q. Was he a fellow worker of yours?

A. Yes, he was.

Q. In that same department?

A. Yes.

Q. Were you workers together?

A. No, we worked on the same type of job, but not together.

Q. Now, Mr. Ramsay, will you tell us what effect the discussion about the petition had upon the work in the department?

Mr. Rissman: I object to that question as calling for 1740 a conclusion.

Trial Examiner Batten: Well, I don't believe this witness—you are not a foreman, are you? You haven't anything to do with the supervision of the men?

The Witness: Absolutely not.

Trial Examiner Batten: Well, I will sustain the objection. I don't think he is qualified to tell what effect it has on production; he is not responsible for the production.

Mr. Engelhard: No, I said what effect it had upon the men, not production.

Mr. Rissman: I object to that question also, if the Examiner please.

Trial Examiner Batten: I will sustain the objection. He may testify if he knows what was going on in the shop. I don't think he is qualified—

Mr. Engelhard: Well, then, I will put it that way to him.

Q. (By Mr. Engelhard) Mr. Ramsay, what was going on in the shop, particularly around you, your place of work?

A. Well, the fellows were discussing the petition that Mr. Kinch had brought up for the men to sign; they were discussing its merits and demerits, that Mr. Deuchars spoke about, and they were talking quite extensively about it on numerous days.

Q. And at what time of the day?

1741 A. All day, both morning and afternoon, and at lunch.

Q. (By Trial Examiner Batten) Did you spend quite a bit of time talking about the petition?

A. No, I didn't.

Q. Well, how many men did?

A. Well, I couldn't be specific about that.

Q. Was it only the men or Mr. Kinch and several men?

A. They wasn't talking to Mr. Kinch at all.

Q. I say, were there several men talking in the plant?

A. Yes, there were.

Q. Spending a lot of time talking?

A. They were talking about Mr. Kinch's petition.

Q. Was the foreman present?

A. I don't know whether he was or not.

Q. Did you ever see him present when the men were talking?

A. He must have been present, he was supposed to be in the shop all day.

Q. Well, that was so obvious there that the foreman should see it.

A. Absolutely.

Q. He couldn't help but see it.

A. I would see it if I was the foreman.

Q. (By Mr. Engelhard) Will you go on and tell us what the men did.

A. Well, Mr. Kinch had a petition in his tool box or drawer, either a tool box or a drawer, and the boys signed it, some of them went up and signed.

I spoke to Mr. Kinch about it and he knew that my views did not coincide with the petition; he had talked to me at lunch time about it, we spoke about the petition at lunch time, and still I didn't sign it.

Q. Well, now, how many days would you say this discussion went on in the plant?

A. Well, it must have—

Q. About how long?

A. It must have went on for two or three weeks anyhow.

Q. Were there any hard feelings between the men?

A. Well, there were some hard feelings toward me because I was, I think I was the only man that didn't sign the petition.

Q. Now, why didn't you sign the petition?

A. Well, I will tell you, I didn't think it was right to sign the petition that didn't give any protection to the man that was served as an apprentice, as a mechanic, when he started the business and worked there for seven years before he could be classed as an A-1 mechanic, and I feel that an apprentice could start in there and probably get around 30 cents an hour to start with, and they could bring a fellow in from any place as a helper and he will give—he will get 50 cents an hour and he will learn the job himself in a period of five or six years and he will be classified as a mechanic as well as an apprentice.

Q. And you had your apprenticeship and had put in years as a machinist in the plant?

A. Yes, sir.

Q. In Scotland.

A. Yes.

Q. And in this company, you had worked for the Falk Corporation barely a year, a little over a year at the time the petition was circulated?

A. That is right.

Mr. Rissman: If the Examiner please, I move that the last

two questions and answers be stricken as entirely immaterial to the matters in issue in this case.

Trial Examiner Batten: Well, I don't know they are at all material, but I have no desire to foreclose counsel from proceeding, because certainly the plaintiff had plenty of latitude to proceed, and I have no objection, if counsel considers it material.

As I say, I don't know where it is particularly material with reference to the particular case itself. I can see where any evidence with respect to disruption in the plant and the decrease of production might be material.

I will permit counsel to proceed.

Mr. Rissman: I have no desire to curtail counsel's opportunity to put in his case. I merely object to the specific 1744 questions and answers as being immaterial.

Trial Examiner Batten: Well, they have been answered now.

You may proceed, Mr. Engelhard.

Q. (By Mr. Engelhard) Mr. Ramsay, you stated your reasons to your fellow workers why you did not sign the petition?

A. Yes.

Q. That you would be a victim of that classification?

A. Yes, sir.

Q. With your 14 years experience you would have no chance of classifying as an A-1 mechanic?

A. That is right.

Q. Because you had worked at The Falk Corporation less than 7 years.

A. That is right.

Q. Now, then, as a result of the talks that were going on there about the petition, and your reason for not signing it, can you tell us whether or not that caused any loss of production that you know of personally?

Trial Examiner Batten: Now, you can answer that yes or no, whether you know personally.

The Witness: Yes, I do know personally.

Q. (By Mr. Engelhard) Will you explain what you know?

A. Well, that quarrel I had with Mr. Ritchie, we were working on the same type of unit and he was assembling a job and I knew he was going about it the wrong way. I 1745 tried to correct him, and he told me to mind my own business, when he wanted to know anything he would come and ask.

He went ahead and built the job and had to tear it down and again re-assemble it.

Q. (By Trial Examiner Batten) Did you tear it down?

A. I helped.

Q. Did you assemble it?

A. Did I assemble it?

Q. Yes.

A. No, Mr. Ritchie assembled it.

Q. You say you tore it down?

A. I helped to tear it down, yes, if I am not mistaken.

Q. Did the foreman instruct you to do it?

A. Yes.

Q. (By Mr. Engelhard) Well, what was the reason. Just like that, please.

Did you and Mr. Ritchie have any conversation about that particular job before Mr. Ritchie had completed it?

A. Yes, sir.

Q. What was the conversation?

A. Well, he didn't oil the bearings—

Q. (By Trial Examiner Batten) He asked you what was the conversation. Did you and Mr. Ritchie have a conversation about it?

46 A. Yes.

Q. Tell us what was said.

A. You mean did we have a conversation at the time he was erecting the job?

Mr. Engelhard: Yes.

A. Yes, we did.

Q. (By Mr. Engelhard) Tell us what the conversation

3. Well, I told him he was erecting the job wrong, he had

oil the bearings before he could go ahead and erect the job.

Q. What did he say?

A. He told me to mind my own business, if he wanted any

vice from me he would come and ask me.

Q. Prior to the time of this petition being circulated, what

your relationship with Mr. Ritchie?

A. We were quite friendly.

Q. You had worked together at the same job?

A. No, I never worked with Mr. Ritchie on any job in the

city, but I belonged to the same society he did, the St. Anthony's Society.

Q. He is a Scotchman too, isn't he?

A. Yes.

Q. Then what happened? You say—I don't care to repeat his testimony.

Mr. Engelhard: Will the reporter read the last question and answer?

(The record was read.)

Q. (By Mr. Engelhard) Now, after you had suggested to him that the bearings, is that it, needed oil—

A. Oil groove.

Q. An oil groove?

A. Yes, sir.

Q. (Continuing) What did he do?

A. He went ahead and assembled the job with the oil groove bearings—pardon me, he oiled the groove bearings.

Q. Yes.

A. After he was told.

Q. Then what happened?

A. Well, he assembled the job without putting on the oil retainer.

Q. Before he did that, did you notice that he was doing it?

A. Yes.

Q. Did you talk to him about it?

A. No, I didn't.

Q. Why not?

A. Because he told me to mind my own business and I didn't want to interfere.

Q. Well, how long did it take him to complete the assembly of that job after you noticed that he was doing it the wrong way?

1748 A. Well, it took him about a day to assemble the job.

Q. And after the job was assembled, then what happened?

A. They had to tear it down again.

Q. And you assisted in tearing it down?

A. Yes.

Q. At Mr. Ritchie's request?

A. No, at my foreman's request.

Q. And after the job was torn down, what was done?

A. It had to be re-assembled.

Q. Now, how much time, Mr. Ramsay, was there wasted in that operation?

A. Oh, I imagine 24 hours.

Q. 24 hours of labor.

A. Yes.

Q. Of one man or two men?

- A. Of two-men.
- Q. Do you know of any other incident?
- A. No, I don't.
- Q. There are occasions in the erecting department where men must cooperate, are there not?
- A. Oh, yes.
- Q. One man cannot do the job alone.
- A. That is right.
- Q. What is the effect if the men are unfriendly because of any thing that might have occurred between them when they are working together?
- 49 A. Well, they just naturally don't pull together; I couldn't give you any statement on that. I know when I worked on the job with a man I didn't get along with, I could just go ahead and let him do his work.
- Of course if it is necessary for us to pull in the same direction, naturally it slows up the job a little bit. I don't know, I couldn't tell you that—
- Q. Well, it does not make for increased efficiency, does it?
- A. No, it certainly does not.
- Q. The tendency is to decrease the efficiency of both.
- A. I think so.
- Mr. Engelhard: I think that is all.

Cross-Examination.

- Q. (By Mr. Rissman) Did Mr. Kinch ever make any threats to you?
- A. No, he didn't.
- Q. Have you any hard feelings against Mr. Kinch at the present time?
- A. Absolutely not.
- Q. Do you know if he has any against you?
- A. I know he hasn't.
- Mr. Rissman: That is all.
- Q. (By Trial Examiner Batten) Have you ever taken out your first papers?
- 10 A. Yes, I have.
- Trial Examiner Batten: That is all.
- Witness excused.)
- Mr. Engelhard: Mr. Greget.

LESLIE GREGET, called as a witness by and on behalf of the Respondent, being previously duly sworn, resumed the stand and further testified as follows:

Direct Examination.

Trial Examiner Batten: You were sworn before, were you, Mr. Greget?

The Witness: Yes, sir.

Mr. Engelhard: I might say, Mr. Examiner, that these witnesses I am calling now are merely on the Kinch matter and that we will close that before we go into anything else. I may use Mr. Greget for something later.

Therefore, when I am through now that does not mean I am through with him entirely in the case.

Trial Examiner Batten: I think Mr. Engelhard, perhaps that will simplify it, I mean if there is no objection, Mr. Rissman.

Mr. Rissman: You mean take the Kinch matter and the other matters?

Mr. Engelhard: Close up that Kinch matter.

Mr. Rissman: That is all right with me.

1751 Trial Examiner Batten: I think that perhaps will simplify it.

Mr. Engelhard: I did not want to give the impression that by putting Mr. Greget on the stand and asking a few questions that I was through with him entirely.

Trial Examiner Batten: You may proceed.

Q. (By Mr. Engelhard) Mr. Greget, will you tell us your experience you had with Mr. Kinch regarding the circulation of the petition.

A. Well, we talked about the petition several times.

Q. At what times of the day?

A. Well, it was during working hours.

Q. Who would approach the other?

A. Well, while I was working there Mr. Kinch came along and he had to go through to get to his work, and some of the times he would stop and talk to me on his way.

Q. Now, how long did he stop—how long would he stop and talk or how long did he stop and talk at different times?

A. Sometimes it would be several minutes. I know one particular instance I went over to his department, and in

going by there I stopped and talked with him, oh, quite some time, at least 15 or 20 minutes, at that time.

Q. Where were you going at that time?

A. I was going to the stockroom in his department.

Q. How did you happen to stop there to talk to him?

1752 A. Well, I went right by where he worked.

Q. Was this during working hours?

A. It was.

Q. Who spoke to the other first?

A. Well, I wouldn't make a statement to that question.

Q. You don't recall as to whether you stopped to talk to him or whether he asked you and talk?

A. I really couldn't say, that is quite some time ago.

Q. How many times would you say you have talked about this petition with him during working hours?

A. Oh, I would say four or five times.

Q. Did you ever sign the petition?

A. No.

Q. Well, was the reason that you and Mr. Kinch talked about the petition a number of times because the first time he talked to you about it, you wouldn't sign it?

A. Well, I did not approve of the petition.

Q. Just answer my question.

Trial Examiner Batten: Read the question please.

(The question was read.)

Mr. Rissman: I object to the question as leading and suggestive. He may ask him to state the conversation if he knows.

Trial Examiner Batten: Well, he may answer. I don't know how material it is.

1753 The witness: I can't just get that straight.

Trial Examiner Batten: Read the question again please.

(The question was again read.)

The Witness: Yes.

Q. (By Mr. Engelhard) Did you persist in your refusal not to sign it?

A. Yes.

Q. (By Trial Examiner Batten) And I presume he persisted in trying to get you to sign it, didn't he?

A. Yes.

Q. (By Mr. Engelhard) Now, why didn't you sign it?

A. Because the petition did not meet with my approval.

Q. What information did Mr. Kinch try to get from you besides requesting that you sign the petition, what information did he try to get from you?

Mr. Rissman: I object to the question. It is leading and suggestive, and Mr. Engelhard has asked—

Trial Examiner Batten: Well, I think it is. I think if he wants to repeat the conversation, Mr. Engelhard, that he had with Mr. Kinch with respect to this petition, all right, but I think your question is rather—at least it indicates to the witness that there was something further.

“If he had a conversation, let him repeat it. You may proceed.

Q. (By Mr. Engelhard) I will ask him the direct 1754 question, then, Did Mr. Kinch ask you about your wage rate?

A. Yes.

Q. Did you give him your wage rate?

A. No.

Q. Why didn't you give him your wage rate?

A. Because that had something to do with the petition.

Q. Can you state whether or not Mr. Kinch's conversation with you and your conversation with him had any effect upon your work?

A. Well, I suppose it took me off my work for the time being.

Mr. Rissman: I object to that and move the answer be stricken.

Mr. Engelhard: Just a moment, he hasn't finished the answer. You interrupted him while he was answering.

Trial Examiner Batten: Let him go ahead and finish his answer.

Mr. Rissman: All right.

Q. (By Trial Examiner Batten) Had you finished, Mr. Greget?

A. Well, that is just about all I would say.

Q. (By Mr. Engelhard) What was your answer? Just let me hear what the answer was.

Mr. Rissman: Read the answer please.

(The answer was read.)

Mr. Rissman: I move that answer be stricken; it is 1755 not responsive to the question.

Trial Examiner Batten: I think it can stand. He said he supposed it did that; it may stand.

Mr. Rissman: For what it is worth.

Mr. Engelhard: That is all.

Cross-Examination.

Q. (By Mr. Rissman) How did it take you off of your work?

A. Because I can't be working and talking very well at the same time.

Mr. Rissman: That is all.

Trial Examiner Batten: That is all.

(Witness excused.)

Mr. Engelhard: Mr. John Brever.

Just a moment, I will take Mr. Green on the Kinch matter first.

Trial Examiner Batten: What is Mr. Green's first name please?

Mr. Engelhard: Harry.

Trial Examiner Batten: I think we will recess for about five minutes.

(A short recess was taken.)

Trial Examiner Batten: I believe we are ready to proceed, gentlemen:

1756 HARRY GREEN a witness called by and on behalf of
the Respondent, being previously duly sworn was
examined and testified as follows:

Trial Examiner Batten: You have been sworn before, haven't you, Mr. Green?

The Witness: Yes.

Direct Examination.

Q. (By Mr. Engelhard) Mr. Green, you are superintendent of the Falk Corporation?

A. Superintendent of all of the machine shop.

Q. How many machine shops are there?

A. Three.

Q. What are they?

A. 1, 2 and 3 machine shops.

Q. Do you know the foremen in Shop 1?

A. Raffel and Bartels and the general foreman, by the name of Senn.

Q. How many foremen are there in Shop 2?

A. Five.

Q. I mean were at the time of the Kinch matter.

A. There were five.

Q. And how many in Shop 3?

A. Three, three and two, really five foremen there.

Q. In shop 3?

A. Yes.

Q. And how many foremen did you say there were in Shop 1?

1757 A. Three.

Q. In what shop did Mr. Kinch work?

A. Shop 3.

Q. And the foremen in the various shops reported to you about what was going on in the different shops from time to time?

A. Yes.

Q. And the conditions and production?

A. Yes.

Q. And how the men behaved?

A. Yes, sir.

Q. And when the foremen reported to you as to what the condition was, what did you do in order to substantiate what the foremen told you?

A. I went in and asked some of the men what was the matter.

Q. Now, prior to December 10, 1936, that was the day when the Works Council meeting had before it the proposal, the Kinch proposal—

Mr. Rissman: What date?

Mr. Engelhard: December 10th.

Mr. Rissman: Thanks.

Q. (By Mr. Engelhard) Did you notice any activity on the part of Mr. Kinch?

A. Not personally.

Q. Did you make any investigation as to what activities Mr. Kinch was carrying on?

1758 A. Yes, I talked to various foremen and several foremen came in and reported to me that he was going around the shop.

Q. Did you talk to Mr. Kinch about it?

A. Once.

Q. What did you say to him?

A. I asked him not to do it. I told him it wasn't good

for the discipline of the shop, and they were not allowed to gossip and talk around the ship.

Q. And subsequent to your conversation with Mr. Kinch, did you have any further complaint from any of the foremen?

A. No, I don't think I did.

Q. What effect did you notice Mr. Kinch's activities had upon the men?

A. Well, one statement there he made to Mr. Harold Falk or Mr. Richard Falk about 30 per cent more production, if they got a share of the profits, these men got very angry about it and said Mr. Kinch didn't know what he was doing, that nobody could do 30 per cent more work, no matter what they got paid.

Q. What effect did that have, that condition of anger among the men, what effect did that have upon production?

Mr. Rissman: I object to the question. The question involves a characterization of the condition among the men, and attempts to influence the answer to the question.

1759 Trial Examiner Batten: Let's have the question please.

(The question was read.)

Trial Examiner Batten: I don't think there is any evidence here that the men were all angry, is there?

Mr. Rissman: He just testified that.

Trial Examiner Batten: You mean about what they could produce, 30 per cent more?

Mr. Engelhard: Yes, it made them angry.

Mr. Rissman: That is not his testimony.

Trial Examiner Batten: I presume, perhaps the best way to show the production is to show whether the production did decrease.

However, you may answer the question.

The Witness: I think I answered it.

Trial Examiner Batten: I don't think you answered it. Read the question again.

(The question was again read.)

The Witness: Well, how much effect upon production, I couldn't truthfully answer, but you could see the men were not working as they should do for a couple of days after that.

Q. (By Mr. Engelhard) What do you mean by that?

A. They were talking among themselves, and they came and told me about it, that it was impossible to do that.

Q. This was after December 10th?

A. Yes.

1760 Q. The information contained in the minutes of the meeting was circulated around the plant?

A. Yes.

Q. And in the minutes the discussion was made that Mr. Kinch claimed 30 per cent more work could be done.

A. Yes.

Q. If the men got a share of the profits.

A. Yes, something like that.

Mr. Rissman: I move that the last question and answer be stricken, if the Examiner please, as leading and suggestive.

Trial Examiner Batten: It may stand.

Q. (By Mr. Engelhard) Which of the foremen complained to you, Mr. Green?

A. I think the first foreman to complain—one of the first was Mr. Senn, he complained about Mr. Kinch being in No. 2 shop for half an hour gossiping with another man.

Then I went to Mr. Deuchars and asked him if he knew what his men were doing. I told him I had a report from one of the other foremen, that Mr. Kinch had been in No. 2 shop for half an hour, and why didn't he look after his men. Mr. Deuchars went to Mr. Kinch then.

Q. What other foreman complained to you?

A. Mr. Deuchars complained once or twice, and Mr. Henderson complained once.

Q. In the investigation situation, did you talk to
1761 some of the men themselves, or did some of the men tell you what Mr. Kinch was doing?

A. They said he was going around and wanted them to let him know how much an hour they were getting for one thing; he wanted to know all the rates of the various men, and that antagonized some of the men because they thought it was the pet theory about how they were going to be paid, and the fellows in the higher brackets didn't like that at all.

Mr. Rissman: I move that be stricken as not relating to the conversation.

Trial Examiner Batten: It may be stricken.

Q. (By Mr. Engelhard) Will you state specifically, Mr. Green, what some of the men stated to you and who the men were? I am now inquiring as to Mr. Kinch's activities.

A. I could not state specifically the names because I heard

it various times, heard at various times about it; but I couldn't specifically give the names, but Mr. Greget complained about him stopping with him quite a bit and asked me to tell him to keep away from his machine.

Mr. Greget was one; I don't remember the names exactly, who they were.

Q. What were the specific complaints of these men?

A. That he was stopping at their machine and asking them to sign a petition, and also asking the wage rates.

Mr. Rissman: I move that answer be stricken un-1762 less the witness can tell us who the men were, the time of the conversation and where it took place.

Mr. Lamfrom: If the Examiner please, that is a ridiculous objection.

Trial Examiner Batten: Well, of course I think, Mr. Green, who is superintendent of the plant, and I presume that is a part of his duties to oversee the whole shop, and I presume that from time to time a great many men talked to him.

Now, I think he should be permitted to testify in general what these men told him. Not being able to recall anyone's name but Mr. Greget, I think that would go to the weight to give to the testimony, but I think a man in Mr. Green's position, who is superintendent of a shop, or a man who is an officer of a union, certainly through his contacts with a great number of men, is able to state in substance what the results of all of these conversations may be.

Mr. Rissman: Except Mr. Examiner, unless we know with whom these conversations or alleged conversations were had we have no way of meeting it. The only man he has mentioned is Mr. Greget, and Mr. Greget's testimony brought out the fact that the conversation was a little different from that he has explained.

Trial Examiner Batten: Well, as I say, I think your objection goes to the weight of the testimony, the weight 1763 to be given to the testimony.

As I say, I think a man who is superintendent, and also a man who is an officer of a union, who is contacting employees all the time, who is contacting his members all the time, certainly ought to be in a position to make a more or less general statement in this respect, and for that reason I think Mr. Green may answer the question.

Mr. Rissman: Except, as I pointed out, we have no way of meeting it. It has to be taken just for what it is worth.

Trial Examiner Batten: I say, that goes to the weight you will give to the testimony, Mr. Rissman.

You may proceed, Mr. Engelhard.

Mr. Engelhard: What was the question, Mr. Reporter?

(The record was read.)

Q. (By Mr. Engelhard) Mr. Green, how many men were in there at work at the time when this campaign was on to get the petition signed, how many men were working in Shop No. 1?

A. That I couldn't answer.

Q. Well, approximately, were there ten or one hundred?

A. It would be probably somewhere between 50 and 100 in No. 1 shop.

Q. And how many in No. 2 shop?

A. Approximately 100.

Q. And how many in No. 3 shop?

A. I think about the same figure, somewhere in there, 1764 75 or 100. That is, on the day shift.

Q. When you spoke about the number of foremen, did that include the day and night shift?

A. No.

Q. Just the day shift?

A. Yes, sir.

Q. Would you say in the three shops you had approximately 300?

A. In No. 3 shop?

Q. I mean in the three shops.

A. Yes, sir.

Q. Approximately 300 men.

A. Yes, somewhere around that.

Q. And as the various men in these departments talk to you, you receive impressions.

A. Yes.

Q. But you can't at this time say just who the men were that gave you those impressions?

A. No.

Q. And your judgment of what Mr. Kinch did was based upon the impression you received by having the men talk to you about what he was doing.

A. Certainly.

Trial Examiner Batten: Mr. Engelhard, I wonder if you would mind asking him how many men he talked to.

1765 Q. (By Mr. Engelhard) How many men did you talk to about Mr. Kinch over this period of time?

A. I should judge at least 20 at different times.

Q. Were they complaints—were the complaints they made all the same or did they vary?

A. No, they were practically all the same, either about the wage rates or this 30 per cent, or the classification, those three items that they complained about.

Mr. Engelhard: That is all.

Cross-Examination.

Q. (By Mr. Rissman) The only man you remember out of the 20 was Mr. Greget?

A. Yes.

Mr. Rissman: That is all.

Trial Examiner Batten: Mr. Clark?

Mr. Clark: I have no questions.

Trial Examiner Batten: That is all, Mr. Green.

(Witness excused.)

Mr. Engelhard: Just a minute. Mr. Green, will you take the stand again, please.

HARRY GREEN was recalled as a witness by and on behalf of the Respondent, being previously duly sworn, further testified as follows:

Direct Examination.

Q. (By Mr. Engelhard) How did you happen to re-1766 member Mr. Greget out of these men?

A. For this reason, that he came to me one morning and asked me to keep Mr. Kinch away from his machine, that he had been there half an hour that morning and he was sick and tired of listening to him.

Those were his exact words.

Mr. Engelhard: That is all.

Mr. Rissman: No questions.

Trial Examiner Batten: That is all.

(Witness excused.)

Mr. Engelhard: Mr. Brever.

JOHN BREVER, a witness called by and on behalf of the Respondent, having been first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Engelhard) Mr. Brever, what is your first name, please?

A. John Brever.

Trial Examiner Batten: You will have to talk louder, so that everyone can hear you.

How do you spell it?

The Witness: Brever, B-r-e-v-e-r.

Q. (By Mr. Engelhard) Where are you employed?

A. The Falk Corporation.

1767 Q. And how long have you been employed by the Falk Corporation?

A. 19 years.

Q. You say 19 years?

A. Yes, sir.

Q. Have you been employed steady there?

A. Yes, sir.

Q. Now, what is the nature of your work now?

A. Well, I am running a lathe now.

Q. What kind of work did you do when you began?

A. Well, I worked on a mill machine when I started.

Q. What kind of work did you do other than the mill machine and the lathe?

A. Well, I run various machines in the shop.

Q. You run various machines in the shop?

A. Yes, sir.

Q. At this time?

A. At this time, no; at this time I am running a lathe.

Q. Were you a member of the Works Council?

A. Yes, sir.

Q. Pardon?

A. Yes, sir.

Q. When did you become a member of the Works Council?

A. Well, I believe after I filled out the unexpired term of Mr. Kinch, that was in February 1937.

1768 Q. 1937?

A. Yes.

Q. Had you ever been a member of the Works Council prior to that time?

A. No, sir.

Q. Did you attend all of the meetings of the Works Council subsequent to the time you were elected?

A. I don't understand what you mean by that, before or after.

Q. After you were elected.

A. Yes, I attended every meeting.

Q. Do you recall the meeting of the 8th of April?

A. Yes.

Q. Will you tell us what occurred at that meeting, just tell us generally what occurred at that meeting?

A. Well, at that time, at that meeting, the discussion was about the raise. You see, I spoke in the month of March for a 5 per cent raise and vacation with pay, and the answer was given to us on April 8th that we would get the raise but no vacation.

Q. What other matters were discussed at the meeting of the 8th?

A. Well, the matters there that were discussed, were Mr. Harold Falk attended that meeting and he read a long letter by which he could not give us the raise, but he would consider the matter and grant us a raise the first of June, because the new orders would go into effect about June 1st.

Q. What discussion was had at that meeting, if any, about the formation of an independent union?

A. Well, there was no discussion at all about forming an independent union, at all.

Q. Was there any discussion at that meeting regarding the future of the Works Council?

A. Well, no, not exactly. I did not know that that would be the last meeting of the Works Council, I did not know it, but I asked permission from Mr. Harold Falk whether we could meet with the present council men and ex-council men have a separate meeting, and that was granted.

Q. Just tell us what you said and what Mr. Falk said about that matter.

A. Well, the only thing I could say about it is that I asked Mr. Falk for permission and it was granted, that we could have that meeting.

Q. Did you explain to Mr. Falk at the time the purpose of the meeting?

A. Not, not at all.

Q. Now, why did you ask him permission to have a meeting?

A. Why, at the time, you know, there was a bill pending at Madison which they called the Severson Act, and I knew if that bill would go through that the Works Council would be abolished.

1770 I happened to be chairman of the Works Council, and I informed Mr. Hydar I have a meeting and to send notice to all all of the representatives, and ex-representatives, that we are going to have a meeting, but I didn't say for what purpose.

So, on April 12th we had this meeting.

Q. And what occurred at that meeting?

A. Well, at that meeting, as we gathered with the members that were present, I said, "Before we start we will have to elect a chairman", and they appointed me as chairman, so I read a letter to them which I have here, that was read at that meeting.

Q. Will you please read that letter?

A. Yes, sir.

"To the Council Members and Ex-Council Men:

"As you all know by now, there is a bill pending in the Legislature at Madison which is the so-called small Wagner Labor Relations Bill. We today are facing a serious problem, more than some of us think about, due to the fact that shop council will be abolished if enacted in law, and it is up to us older employees of the Falk Corporation to work for perfect harmony and create our own union which is according to my opinion legal under the Wagner Labor Act."

That was the letter I read at that meeting.

Trial Examiner Batten: May we have that introduced as an exhibit, please?

1771 Mr. Lamfrom: I think it should be.

Trial Examiner Batten: Don't do any writing on that, don't even put your pencil on it.

Q. (By Mr. Lamfrom) What is this you have got here, Mr. Brever?

A. This is the letter that I read at the meeting, from here on, and here, the other part, that I sent notice to Mr. Hydar to have the notice sent out to the ex-council men.

Q. Is this a memorandum that you made up?

A. Yes, this is.

Q. Where is the letter?

A. Here is the letter in here.

Q. Where is the original, the one you had at the time?

A. This is the one, I recopied it, what is here. That is the original right here, the way I read at that time.

Q. Have you got the original letter?

A. No.

Mr. Engelhard: I don't know whether we can introduce a memorandum.

Trial Examiner Batten: I don't know that I exactly understand him.

Q. (By Trial Examiner Batten) When did you write this?

A. I have had this a long time—

Q. When, I say.

1772 A. Well, right—just the letter part in there, I had—

Q. No, this piece of paper, when did you write it?

A. That I got about two weeks ago.

Q. What did you do with the original one?

A. The original one, I destroyed that.

Q. Why did you destroy that and put it in here?

A. Because I never knew this would come to a head like this.

Q. Did you think you would need this and you wouldn't need the original?

A. Well, I just put that down because I remembered it.

Q. My question is, did you think you would need a memorandum here but you would not need the original paper?

A. Yes.

Mr. Engelhard: We can't very well introduce a memorandum.

Trial Examiner Batten: I will introduce it, I think it should be introduced, the way it is; I think it is proper that it should be.

Mr. Rissman: You mean with the other notes?

Trial Examiner Batten: Yes, that is the only record we have. He says he destroyed the other.

The Witness: Sure.

Mr. Engelhard: Well, if counsel does not object, we will introduce the memorandum notes.

1773 Trial Examiner Batten: Well, I have requested that you introduce it, and I presume it is assumed that I am not apt to rule that it will not be received.

Mr. Rissman: I join in the request.

Mr. Engelhard: He hasn't objected.

Trial Examiner Batten: I didn't say that.

Mr. Rissman: I join in the request.

Mr. Engelhard: Will the reporter mark this Respondent's Exhibit No. 6? That consists of two pages.

(Thereupon the document above referred to, was marked Respondent's Exhibit No. 6, for identification.)

Mr. Engelhard: Now I offer in evidence this memorandum which includes the letter, a copy of the letter that he says is included in the memorandum, in evidence.

Trial Examiner Batten: It will be received.

(Thereupon the document above referred to, heretofore marked as RESPONDENT'S EXHIBIT NO. 6, for identification, was received in evidence.)

Q. (By Mr. Engelhard) Mr. Brever, after you had read this letter at the meeting of these men, what occurred then?

A. Well, we couldn't come to no agreement, no—

Q. No agreement as to what?

A. I mean after this letter, after this discussion, we had quite a discussion about it, so we couldn't get no agreement or settlement about the Wagner Labor Act or about the Severson Act; so I, acting as chairman, I sent Frank 1774 Kokalj to get Mr. Harold Falk to the meeting.

When Mr. Harold Falk came to the meeting I told him to take the floor, and told him to explain some of the points in the Act, and he told us he didn't understand the law thoroughly, but that we could do according to our own choosing and join any organization which we may see fit; we could even go as far as creating our own union if we wished to do so.

The meeting adjourned at that point.

Q. Were you at any other meeting after that meeting of the 12th?

A. After the 12th, I left the plant on April 12th due to illness and I did not return to work until April 21st; I did not attend no other meeting.

Q. What was your illness?

A. I have spleen trouble.

Q. Mr. Brever, when did you tell Mr. Hydar about notifying the men?

A. Immediately after the meeting of April 8th.

Q. Did you have any further occasion to talk to Mr. Hydar about notifying the men?

A. Not until the day of the meeting, the 12th.

Q. Then what happened?

A. Then I asked Mr. Hydar whether he had sent the notice to all of these members and he said it slipped his mind,

he had sent it to some of them, but not all, and I believe
1775 he telephoned or went personally, I don't know where
he got them, but he got them somehow and they attended
the meeting, some of them.

Q. Now, will you tell us what the conversation was between these men and yourself—between the men and you on one side and Mr. Falk on the other at this meeting of the 12th?

Mr. Rissman: I object to the form of the question. He hasn't indicated that there was any, as the question indicates.

Trial Examiner Batten: Well, I presume the question, Mr. Engelhard, is for him to repeat the conversation that took place.

Mr. Engelhard: Yes, that is what I am asking him.

Trial Examiner Batten: You may just repeat the conversation that took place at this meeting, what you said, what Mr. Falk said and what anybody else said.

The Witness: Well, I exactly don't remember what Mr. Falk said, as much as what I previously said, that we could join any kind of organization, and we could even go as far as having our own union.

Q. (By Mr. Engelhard) Was there any conversation there as to the matter of meeting on company property?

A. Not at all.

Q. Was there anything said about a wage increase at that meeting?

1776 A. Well, there was one member, he asked Mr. Falk why he wanted to give us a raise on June 1st, instead—

Q. Who was that man?

A. I think it was Mr. Wilfer, and after a lengthy discussion there with Mr. Falk and Mr. Wilfer, Mr. Falk finally agreed that we could get it on May 1st.

Q. Was there any discussion at that time with Mr. Wilfer, did you hear any discussion about an independent union?

A. Not that I know of.

Mr. Engelhard: That is all; well, just a question farther.

Q. (By Mr. Engelhard) Mr. Brever, how did it happen that you drew up this memorandum which is Respondent's Exhibit No. 6?

A. Well, I generally always do that when I am to appear in court or when I have anything—when I have any discussion with anybody, it is my practice to do that.

Q. (By Trial Examiner Batten) Let me ask you: You drew this up at the time of the meeting?

A. No.

Q. Then you didn't follow your practice on that occasion?

A. I had another one there, but this one, I have drew this one—I threw the original one away and then I make this one.

1777 Q. (By Mr. Engelhard) Let me ask you, did you make this memorandum from memory?

A. Yes, sir.

Q. Then you didn't have the original lying before you when you made this one?

A. Sure, I had the original, but threw it away, but I did write into my memorandum here what occurred at the April 8th meeting.

Q. What was the occasion for your writing this?

A. The occasion was, in case any discussions were brought up, that I would have something then as a record.

Q. Did anyone interview you about coming to court prior to the time that you drew that memorandum?

A. No, sir.

Q. When was the first time you were interviewed regarding your testimony here this morning.

A. The first time I was interviewed?

Q. Yes. When was the first time you were interviewed by anybody in connection with this case?

A. I believe it was yesterday, wasn't it?

Q. Well, I am asking you.

A. It was yesterday.

Q. You were present at the meeting yesterday afternoon at which I was present?

A. Yes, sir.

1778 Q. You did not know at the time you drew your memorandum whether you would be called to court, did you?

A. No, sir, absolutely not.

Q. How did it happen that you threw away the original?

A. Well, the original, I thought I would not need it any more, because after this discussion I thought I would write this all down in one for my own memorandum, see; that is, I write the letter here, what I read to the council on April 12th.

Mr. Engelhard: That's all.

Trial Examiner Batten: I wonder if you will ask him in what respect was the letter different than what this says?

Q. (By Mr. Engelhard) Was there anything else in this letter originally that you read to the council?

A. No, just this, absolutely the same as it was read.

Q. (By Trial Examiner Batten) I mean in reading it, it says "In part as follows."

A. Well, the part,—well, I put that down just the way I thought it should read.

Q. (By Mr. Lamfrom) This exhibit here is a statement of the events.

A. Yes.

Q. Of that time.

A. Yes.

Q. Is that right,—and the letter included, the letter is included in the statement of events.

A. Yes.

Q. And what you did I suppose was to draw this up, so that you would have the whole proceedings of the day's activity here before you?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. And in this memorandum, you included what you said in that letter.

A. Absolutely.

Q. Is it the same as it was in the letter?

A. It is the same thing.

Q. You did not say anything else?

A. Oh, no.

Q. Anything more?

A. That was when I opened the meeting, I read that letter.

Q. In making this memorandum, did you put the contents of that letter in here the way exactly it was said in the letter?

A. Yes, sir.

Q. Then after you had made this memorandum, you threw away the letter?

A. I threw away the letter; I copied the letter in here, threw the other away because I didn't think I would ever need it; I didn't think I would ever use this.

780 Q. All right.

A. I just put that down for my own safety.

Mr. Lamfrom: That is all.

Mr. Rissman: Pardon me a moment while I read this.

Trial Examiner Batten: Yes.

Cross-Examination.

Q. (By Mr. Rissman) When did you write this?

A. Oh, about two or three weeks ago.

Q. Did you talk to anybody about it?

A. No, sir.

Q. Why did you write it?

A. For my own memorandum sake.

Q. Did you have any purpose in mind when you wrote it?

A. Not exactly, no.

Q. How many other memorandums have you of what occurred at shop meetings?

A. Oh, well, I think I belong to the Christmas Club, and I have got certain memorandums there which I read at meetings also. I just threw some of them away here the other day.

Q. When do you usually make up your memorandum, how long after the events take place?

A. Well, at the Christmas Club there, when I belonged to the Christmas Club I used to make them right after the meeting or before I read them at the meeting.

Q. But in this particular event, you didn't make up 1781 the memorandum right after the meeting?

A. No.

Q. You waited until two weeks ago?

A. Oh, two or three weeks ago.

Q. Two or three weeks ago.

A. Yes.

Q. At any rate, you waited from April 12th to about August 1st?

A. Sure; but I had the letter all the time.

Q. But we are not talking about the letter now, we are talking about the memorandum.

A. Yes.

Q. You waited from April to August before writing the memorandum?

A. Yes.

Q. What occurred about August 1st that made you feel you should have the memorandum?

A. Oh, nothing in particular. I just sat down and thought the meeting over and I thought I would make a memorandum of what happened at that time.

Q. Did you make any other memorandums on the first of August?

A. No, I just happened to have a new pencil and pen and I tried it out, thought I would write.

Q. And while you were trying out your new pencil you wrote this memorandum.

1782 A. Sure.

Q. You said you had a new pen too?

A. No, I sent the pen back.

Q. What kind of pencil did you have?

A. Something like Eversharp.

Q. A mechanical pencil?

A. Yes.

Q. Did it have an eraser on it?

A. There was one there.

Q. You used the eraser at the bottom of this memorandum?

A. Because I didn't spell that word right.

Q. You erased the whole line there, because you didn't spell one word right?

A. Sure.

Q. Look at it.

A. Right here, "To create",—

Q. What—

Mr. Lamfrom: Let him finish.

The Witness: "—our own union."

Q. (By Mr. Rissman) What was written here before "own union"?

A. I had that spelled wrong, I had a "d" on there.

Q. What did you have over here where this word "union" appears? That is an "f" here?

A. That is an "f".

1783 Q. (By Mr. Rissman) An "if"?

A. See, it was rubbed out.

Q. What was rubbed out over here?

A. Well, I asked—"a" and "b".

Q. How was the other memorandum written, in pencil or ink, the letter?

A. The other was in pencil also.

Q. In pencil also?

A. Yes, sir.

Q. You wrote that one?

A. I did.

Q. When?

A. Before the April 12th meeting when the Severson Act was pending at Madison.

Q. Did you write it before or after April 8th?

A. Before.

Q. Before the Works Council meeting?

A. Before the Works Council meeting.

Q. You have testified here that when you were at the meeting of April 8th you didn't know anything about the Independent Union?

A. No, I didn't know the Independent Union, I even didn't know the Severson Act would be passed.

Q. Whose idea was it to call a meeting of the former Works Council members and present Works Council 1784 members for April the 12th?

A. My idea.

Q. Did you talk to anybody about it?

A. I think I talked with Leslie Greget.

Q. Did you talk to anybody else about it?

A. No, sir.

Q. What did you and Leslie Greget discuss about it when you saw him?

A. How?

Q. What did you and Leslie Greget discuss about it when you spoke to him?

A. Well, Leslie Greget came over to me and asked me, that I should call the special meeting on account of having some discussion about the Severson Act that was pending in Madison.

Q. When did you tell Mr. Hydar about this meeting?

A. Mr. Hydar?

Q. Yes.

A. Mr. Hydar, I told him to send the notice.

Q. When?

A. At the April 8th meeting, at the adjournment.

Q. Right after the adjournment you spoke to him?

A. Yes, sir.

Q. Did he ask you what kind of meeting you were calling?

A. Not at all.

1785 Q. Did you ever ask Mr. Hydar to send a notice out before for any meeting?

A. Not me.

Q. Did you volunteer to Mr. Hydar the reason for the meeting of April 12th?

A. I did not tell him of the purpose of that meeting.

Q. What made you decide to call the ex-council men?

A. Well, the reason for that was because they all served

on the council and I thought that we will discuss some things, they could see the matter more clearly than anybody else.

Q. Did Les Greget approve of the idea of the ex-council men?

A. Absolutely.

Q. You spoke to him about it?

A. Sure.

Q. Who else did you talk to about it?

A. I didn't talk to anybody else about it.

Q. When you asked Mr. Hydar to call the ex-Works Council men, did he ask you why you wanted them too?

A. No, he didn't ask me anything.

Q. Pardon?

A. He didn't ask me anything.

Q. He didn't ask you anything?

A. No, I just told him to look up the names and send out the notices because we were going to have a meeting.

786 on April the 12th.

Q. What did Mr. Hydar say?

A. I told him to send the notices, and then it slipped my mind, and on the day of the meeting I asked him did he send the notices, and he said it slipped his mind, so he either got them by telephone or person, I don't know how.

Q. Which ones slipped his mind?

A. How?

Q. Which ones slipped his mind?

A. I couldn't say that.

Q. Do you know which ones he sent the notice to originally?

A. Well, I couldn't say offhand to who he sent them, but know some of them got it and others didn't.

Q. Did you give him a list of names to whom to send the notices?

A. No, he had a list there written down of the members that served previously on the Council.

Q. When did he have that list?

A. He had it at the meeting, one list at the meeting.

Q. Which meeting?

A. The April 8th Works Council meeting.

Q. At the April 8th meeting did he have a list of the ex-council men?

A. I asked him to show me the list of the ex-Council men, then I told him to send the notices—

87 Q. But he had that list complete at the April 8th meeting?

A. He thought at first he didn't have it, until I requested to see it.

Q. But he did have it?

A. He did have it.

Q. Did you request him to send notices to anybody else besides the ex-Council men and present Council men?

A. No, just the ex- and the present.

Q. When he came to the meeting of April 12th—pardon me.

Then after the meeting of April 8th you wrote this letter?

A. After April 8th?

Q. Yes.

A. Yes,—well, not the letter; not the letter, the latter part I had.

Q. When did you write this?

A. Well, I couldn't say exactly what day I wrote that.

Q. I said the letter.

A. I wrote that before we had the meeting.

Q. Before April 8th?

A. Before the April 12th meeting.

Q. Did you have this letter at the April 8th meeting?

A. No.

Q. Then between April 8th and April 12th you wrote the letter?

1788 A. Between April 8th and April 12th I wrote the letter.

Q. Did you talk to anybody about it?

A. About the letter?

Q. Yes.

A. No.

Q. Did you show it to anybody before you came to the meeting?

A. No.

Q. Did you show it to Leslie Greget?

A. No.

Q. Did you show it to Mr. Hydar?

A. No.

Q. Was it written on the same kind of paper that this memorandum is on?

A. No, it was written on another sheet, you know, that wouldn't have that name on top.

Q. Where did you write, at home?

A. At home.

- Q. Where did you write this memorandum?
A. At home.
Q. Where did you get this Falk Corporation stationery?
A. Well, I had some in there and I stuck it in in my pocket to write on.
Q. You took home some plain sheets to write the memorandum on?
1789 A. Yes.
Q. Where did you get them?
A. I could get them at the inspector's.
Q. Do you give it to anybody that asks for it?
A. Sure, you can get a sheet of paper if you want to write.
Q. How many sheets did you take?
A. Two of them.
Q. That was all you took?
A. Yes, sir.
Q. Did you know you would be able to get it on two sheets?
A. Yes.
Q. How did you know that?
A. Because I write pretty close, I knew I could get it on; they are pretty long sheets.
Mr. Rissman: That is all.
Trial Examiner Batten: Just a moment, is there anything further?
Mr. Engelhard: Are you through?
Mr. Rissman: Just a moment; just one question.
Q. (By Mr. Rissman) Where did you have those since two weeks ago?
A. I carried it in my pocket all the time.
Q. Have you other memorandums in your pocket?
A. No, I don't think so; I think I have got some newspaper clippings.
1790 Q. On this case?
A. On this case. I think I have got some more here, I don't know what they are. Generally I keep them—
Q. (By Trial Examiner Batten) The question was, have you got any more memorandums?
The Witness: On that case?
Trial Examiner Batten: Any case.
Q. (By Mr. Rissman) Any case.
Trial Examiner Batten: Have you got any kind of memorandums in your pocket?

A. Sure I have got some.

Q. (By Mr. Rissman) What is that?

A. This is January 1929.

Q. What is that?

A. That is just where the little girl wrote to me.

Q. That is all you have got?

A. That is no memorandum though.

Mr. Rissman: That is all.

Trial Examiner Batten: Just a moment. Anything further, Mr. Engelhard?

Mr. Engelhard: Are you through, Mr. Rissman, with your cross examination?

Mr. Rissman: Yes.

Redirect Examination.

Q. (By Mr. Engelhard) Mr. Brever, Mr. Rissman 1791 asked you whether or not you talked about the advisability of having a meeting among the members of the Works Council and ex-members of the Works Council, whether you talked about that with anyone else.

You stated that you only talked to Les Greget.

A. Yes, sir.

Q. How come you and Les Greget talked about it?

A. Well, Les Greget always came over to my machine and he was talking once, he says. "There is a bill pending at Madison that is going to abolish the Works Council. We ought to get together and discuss something else."

Q. When was that with reference to the 8th of April? About how long before the 8th of April was that conversation that you had with Les Greget?

A. About three or four weeks or so, that time when that bill was in Madison, he came over to me and discussed it.

Q. At the time when the meeting took place on the 8th did you know how far that bill had advanced in the Legislature?

A. I think it was pretty near due for passage.

Q. Did you know whether at that time it had passed the House of the legislature?

A. Not on April 8th.

Q. What led you to believe that that bill would eventually pass?

Mr. Rissman: I object to that question, asking this 1792 witness to prophesy about an Act of the legislature.

Trial Examiner Batten: Well, maybe he is a good prophet.

•Mr. Rissman: Perhaps he is.

Trial Examiner Batten: You may answer the question.

The Witness: What was the question?

Q. (By Mr. Engelhard) What led you to believe that the Severson Act as it was called in the Senate, and the Sigman Bill as it was called in the Assembly, would eventually pass?

A. Well, I read a lot about matters that go on at Madison, and I knew they had something like 48 amendments which they threw out and they were going to pass the original bill as it was.

Q. In other words, you got your information out of the newspapers.

A. Absolutely.

Trial Examiner Batten: Don't put this in the record. (Discussion outside the record.)

Trial Examiner Batten: All right, proceed.

Q. (By Mr. Engelhard) Mr. Brever, from your reading of the newspapers and from discussions you had while this bill was pending in the legislature, did you know what effect the passage of that bill would have on the existence of the Works Council?

A. Absolutely.

Mr. Rissman: May I have that question read? 1793 (The question was read.)

Q. (By Mr. Engelhard) What did you know?

A. Well, I knew that that bill if passed and enacted into law would abolish all company unions.

Q. You classified the Works Council as a company union?

A. Well, I called it a company union, the Works Council and everything.

Q. And in anticipation of the passage of the bill, you said you became interested in talking about the future of the men in this plant with Les Greget?

A. Yes.

Mr. Engelhard: That is all.

Mr. Rissman: That is all.

Examiner Batten: Mr. Clark?

Mr. Clark: I have no questions.

Trial Examiner Batten: Is that all?

Mr. Rissman: Pardon me.

Q. (By Mr. Rissman) Are you a member of the Independent Union?

A. At the present I am, yes.

Q. (By Mr. Lamfrom) When did you become a member of the Independent Union?

A. Well, as I said before, I left the plant on April the 12th at 2:30 due to illness, and I returned back to work on April 21st. When I came to my tool chest I opened that tool 1794 chest and I found two cards in there, a blue card and a white card.

Q. We don't know what the blue and white cards mean. Maybe the boys do and you do, but tell us what the blue card meant?

A. The blue card was the C.I.O. card.

Q. And the white card?

A. The Independent Union card.

Q. And what did you do with those cards?

A. Well, according to my own judgment I signed the white card.

Q. When was that?

A. On the 21st.

Q. On the 21st?

A. Yes.

Q. And from that time on you say you were a member of the Independent Union?

A. I am.

Q. And pay your dues?

A. Every month.

Q. How much?

A. 50 cents.

Q. Are you an officer of the Independent Union?

A. No.

Q. Are you on the board of directors?

A. No.

1795 Q. Do you hold any office whatsoever?

A. No, none whatsoever.

Q. Let me ask you, John, did you take suddenly sick on the 12th?

A. I did.

Q. And the boys knew that?

A. The boys knew that I left the plant that day sick.

Q. When you say the "plant," you mean you left the meeting?

A. No, I waited until the meeting adjourned but I was feel-

g bad at the meeting already, and I was glad they adjourned early so I could get out and go home.

Q. The boys knew that?

A. The boys knew that.

Mr. Lamfrom: That is all.

(Witness excused.)

Trial Examiner Batten: I think we will adjourn until 2 o'clock.

(Thereupon, at 12:30 P. M. a recess was taken until 2 o'clock P. M. of the same day.)

96 After Recess.

(Whereupon, the hearing was resumed, pursuant to recess, at 2 o'clock P. M.)

Trial Examiner Batten: I believe we are ready to proceed, gentlemen.

Mr. Engelhard: I will call Mr. Landry.

Mr. Rissman: Just a moment, may I ask the purpose of calling Mr. Landry?

Mr. Engelhard: Just to ask him one question.

Mr. Lamfrom: To act as a witness.

Mr. Rissman: Mr. Landry is not under subpoena.

Mr. Lamfrom: That does not make any difference, he is here.

Mr. Rissman: It certainly does make a difference. I want to know the purpose of calling Mr. Landry on the stand. He testified and he was cross examined.

Mr. Engelhard: I can make him my own witness, can't I?

Mr. Lamfrom: Nothing that he testified to on examination by you will be gone into at this time.

Mr. Rissman: I object to his being called as a witness.

Mr. Lamfrom: We are calling him as an adverse witness.

Trial Examiner Batten: You say that you have objection, Rissman?

Mr. Rissman: Yes, sir, unless we know the purpose of this examination, I object to his being called at this time since he has not been subpoenaed, and he has testified and he was cross examined.

Mr. Lamfrom: He is present here now physically in the room in which this hearing is taking place and we are asking him to take the witness stand.

What do you want us to do?

Trial Examiner Batten: As I presume, as a witness for the respondent.

Mr. Engelhard: Yes.

Trial Examiner Batten: Mr. Lamfrom, is that correct?

Mr. Lamfrom: Yes.

Trial Examiner Batten: Mr. Rissman, I see no objection except this, no objection as to Mr. Landry individually. However, in order that we may be guided somewhat in the future conduct of this case, let me ask if it is the purpose of counsel to from time to time call anybody that happens to be in the courtroom to ask him questions.

Mr. Lamfrom: No, not at all.

Trial Examiner Batten: In other words, I don't want the fact that I permit Mr. Landry to take the stand now, to indicate that as the hearing progresses I shall permit any counsel to just indiscriminately call people to the stand here who have previously testified because some incident may have occurred subsequent to their testimony, on which you want to ask questions.

1798 So that, with the understanding that it will have no bearing whatever on any future ruling, I might say, Mr. Rissman, I can see no objection in this case to asking, as counsel said, as I understand, they have one question they want to ask Mr. Landry.

Mr. Rissman: Except this, if the Examiner please: The Act provides that all parties to the proceeding may ask for a subpoena to any person they wish to have appear here and testify.

I am objecting on the ground that Mr. Landry has not been subpoenaed.

Now, if the Examiner overrules my objection, there is nothing to do but have Mr. Landry take the stand.

Trial Examiner Batten: Mr. Landry, have you any objection to answering a question?

Mr. Landry: I feel I should follow the advice of my counsel.

Trial Examiner Batten: As far as the Examiner is concerned, you may take the stand and answer the question, that is without any reference to any future ruling, and I might say at this time that I am not going to permit the indiscriminate calling of witnesses after this time.

Therefore, Mr. Rissman, I will overrule your objection.

799 HAROLD LANDRY, a witness called by and on behalf of the Respondent, being previously duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Engelhard) Mr. Landry, this morning you heard Mr. Brever read a letter, and I am asking you now when you were present at that meeting on the 12th whether you read such a letter?

A. I do recall the letter.

Mr. Engelhard: That is all.

Mr. Rissman: I move the question and answer be stricken on the reason that Mr. Landry was not subpoenaed as a witness.

Trial Examiner Batten: Well, it may not be stricken for that purpose, but it may be stricken for the reason it is quite apparent now that counsel's only purpose was to call an individual who happened to be in the room, for the purpose of questioning him with respect to a matter testified to subsequent to his appearance on the stand.

Now, it can stand in the record, but my ruling is it may be stricken, so if you desire to take exception to that later on, it will be there.

Mr. Lamfrom: Let me ask, Mr. Examiner, suppose we had gone through the formality of subpoenaing Mr. Landry for the purpose of having him testify on this point, would the situation have been any different?

He was here in the courtroom and Mr. Engelhard asked him before the adjournment—

300 Trial Examiner Batten: Well, I don't know that there would have been any difference, Mr. Lamfrom, in his testimony.

Mr. Lamfrom: No, I mean with the procedure.

Trial Examiner Batten: The only difference would have been, I still think that perhaps would have been the best procedure.

However, as I say, I am permitting the testimony to stand in the record with my ruling on it, so that counsel may take any exception that he cares to, to that, at any time in the future with respect to these proceedings.

Mr. Lamfrom: It would seem to me that it would be only an elementary proposition, that in the administration of jus-

tice that if a person happens to be in the room and it becomes necessary in the furtherance of the establishment, as we conceive it, of the justice of this case, that he may be called to the stand and asked and answer a question.

At least that is the common practice here in Wisconsin. I have never heard the objection raised that the attorney raises here.

Trial Examiner Batten: Well, his testimony is there; I permitted him to answer the question, and you may take exception to the ruling of the Trial Examiner in that respect.

Mr. Lamfrom: May I ask the Trial Examiner to indicate the reason why the testimony—the motion to strike the 1801 testimony is granted?

Trial Examiner Batten: I don't know as the Trial Examiner is under any particular obligation to state his reason; therefore, I do not believe I will state any.

Mr. Engelhard: Just how are we going to meet the situation?

I put Mr. Landry on the stand to corroborate Mr. Brever as to the reading of that letter at that meeting.

Now, is that incompetent? Is it irrelevant? Is it immaterial?

Trial Examiner Batten: Well, I think of course as far as that is concerned, there are plenty of witnesses who counsel could call, who were present at that meeting. As I recall it, there were about 20 people there, and there are plenty people who could testify as to whether the letter was read.

Mr. Lamfrom: On the other hand the testimony of Mr. Landry, an adverse party to this matter, that the matter was read stamps it with considerable credibility right on the face of it; in other words, it goes to the weight.

Trial Examiner Batten: Of course, I did not know there was any dispute as to whether or not the letter was read.

Mr. Lamfrom: I don't know whether there is or is not.

Trial Examiner Batten: I don't know that there is any dispute as to whether or not the letter was read.

1802 Mr. Lamfrom: There is this fact, that the witness appeared with a memorandum which he said he made, that the original letter he threw away and we put this witness on the stand for the purpose of establishing out of his own mouth that the letter, as indicated from the memorandum of the witness this morning, was read to this meeting at which Mr. Landry was present.

That is the establishment of a simple fact, the truth of which can hurt no one.

Trial Examiner Batten: I don't know as anyone is disputing the truth of it.

As far as the Examiner is concerned, I have made my ruling and it stands as made.

Mr. Rissman: And the answer is stricken?

Mr. Lamfrom: Then we will ask leave, Mr. Examiner, to have a subpoena issued for Mr. Landry.

Mr. Rissman: I resist that.

Mr. Lamfrom: We haven't control of the subpoenas.

Mr. Rissman: I will resist that motion, that is not in proper form according to the rules and regulations of the Board.

Mr. Lamfrom: We will be guided naturally as we have heretofore, by the rules and regulations of the Board, whatever they may be on that point, they will be followed.

Trial Examiner Batten: Of course if the request for 1803 the subpoena is made, Mr. Lamfrom, in writing, with a statement as to its purpose, the Trial Examiner will say at this time that I shall issue the subpoena.

Mr. Engelhard: Suppose Mr. Landry gives the same testimony?

Trial Examiner Batten: It does not make any difference whether he gives it or not, I have made my ruling; and as I said, if you make a request for a subpoena, Mr. Landry is here, and I will authorize its issuance.

Mr. Engelhard: The lack of the subpoena I understand is not the reason you have made the ruling.

Trial Examiner Batten: I shall not state any reason. Mr. Lamfrom wanted to know concerning a subpoena, and I said if he requested it I will authorize its issuance.

Mr. Engelhard: I rise to a point of information, Mr. Trial Examiner, and that is this: If Mr. Landry were under subpoena at this time the ruling would be the same?

Trial Examiner Batten: I am not making a ruling unless the situation arises for me to make one, or in other words, I am not going to anticipate any motions. In other words, if a motion is made, at the time it is made I will be glad to rule on it.

Mr. Lamfrom: I see nothing in the rules requiring as a condition precedent to a witness testifying in a proceeding of this kind, that he be subpoenaed in court.

804 Mr. Rissman: No one said that appears in the rules.

Mr. Lamfrom: Then what is your position?

Trial Examiner Batten: Now, Mr. Lamfrom, I have made my ruling and I don't think any further discussion between you and counsel will have any bearing on it.

If you request a subpoena I have already advised you that I will authorize its issuance.

Mr. Lamfrom: All right, we will have someone sent down to the Labor Board for a subpoena. Is there anyone present down there that could issue a subpoena?

Mr. Rissman: I suggest that counsel read the rules.

Mr. Lamfrom: I have read the rules, I am not a pettifogger—

Trial Examiner Batten: Now, just a moment, gentlemen, if you will please address your remarks to the Trial Examiner, as far as that particular issue is concerned, I think it is settled and we can proceed.

Mr. Lamfrom: I now make application under Rule 21 for the issuance of a subpoena for Mr. Landry to appear here and testify concerning the question as to whether the letter testified to by the witness Brever this morning was read at the meeting as he testified.

Mr. Rissman: I resist that motion because the rules of the National Labor Relations Board require that any request for subpoenas be in writing, stating the name of the 1805 party subpoenaed, and shall be timely, and shall specify the nature of the facts to be proved by the witness.

Mr. Lamfrom: Where does it appear in the rules that the application be in writing? Show me! Read it!

I will show—Mr. Trial Examiner, I will show you the rule. If there is anything there that the application must be made in writing, I would like to see it.

Trial Examiner Batten: I think I have one here, I think it is the same one.

Mr. Lamfrom: I don't doubt it.

Trial Examiner Batten: April 27th, 1936.

Mr. Lamfrom: Correct, Sections 20 and 21.

Mr. Rissman: That is yours and this is mine.

Mr. Lamfrom: Well, let's exchange them then.

1806 Trial Examiner Batten: Rule 21 says that "application for the issuance of a subpoena may be filed by any party to the proceeding with the Regional Director or, during the hearing, with the Trial Examiner, and such application shall be timely and shall specify the name of the witness, the nature of the facts to be proven by him, and must specify the documents" and so forth.

There is nothing in that section with respect to a written application, but I assume when it says "filed", it would have to be written, and I also assume when it states "you must name the witness and the nature of the facts to be proven," that it necessarily would have to be in writing if it were filed. Now, I understand you contend by dictating into the record, you are filing a request?

Mr. Lamfrom: Exactly.

Trial Examiner Batten: And the only person who can issue subpoenas, as a matter of fact, is the National Labor Relations Board, so that the Trial Examiner will refer the matter to the National Labor Relations Board with recommendation that it be granted.

Mr. Rissman: I will object to the method of filing, and state that the Act says "application shall be filed"; it means undoubtedly a written application.

Mr. Lamfrom: In addition to the application which 1807 is made to the Trial Examiner, we will also file with the Board here in Milwaukee a written application for the subpoena.

Mr. Rissman: There is no Board in Milwaukee.

Trial Examiner Batten: In order to settle the matter now, I have decided to change my mind, which is a very poor policy for a trial examiner or judge to ever do, but we have wasted ten times more time now than this matter warrants, and Mr. Landry's testimony may stand as it is.

Mr. Rissman: If the examiner please, I move the testimony be stricken on the ground that he did not indicate he saw the letter at the time it is alleged to have been read or that he compared it with the one that was introduced here, or that he knows it was the same matter.

Trial Examiner Batten: The motion is denied.

Mr. Lamfrom: The application for a subpoena is withdrawn.

(Witness excused.)

Mr. Engelhard: Do I understand you are going to proceed with the gentleman that is here with the records?

Mr. Rissman: Yes, the Examiner asked Mr. Meindle to bring in the records of the union with reference to the members and Mr. Meindle has those records at the present time.

Trial Examiner Batten: Will you take the stand, please?

LOUIS MEINDLE, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Rissman) Mr. Meindle, what records have you in your possession at the present time?

A. I have the original application cards that were made by the members applying for application in the Amalgamated Association, and I also have the proof strips of our stencils that were cut from the union lodge of our grand lodge at Pittsburgh.

Q. What do the records indicate as to the number of applications that were filed with your union for membership by Falk Employees?

Mr. Clark: That is objected to as not being the best evidence.

Q. (By Mr. Rissman) How many application cards do you have that have been filed for membership of Falk Employees?

A. The application cards have not been counted since they came back, but our proof strip shows exactly 622, and I have a letter to verify my statement and additional blank union cards are being sent me.

Mr. Clark: That is objected to, and I move that it be stricken as not responsive.

Trial Examiner Batten: It may be stricken.

Q. (By Mr. Rissman) You say the number indicated by the proof strips are 600 and how many?

1809 A. 22.

Q. Have you submitted any in addition to those which have been returned to you?

A. I have.

Q. How many?

A. Approximately about 50.

Q. Do you have the proof strips for those 50?

A. I have not.

Q. Where are they?

A. They will be sent from the Grand Lodge as soon as the proof strips have been finished and the stencils cut for union cards.

Q. What are these proof strips? Just tell me.

A. These proof strips, I can probably explain it; I could show you what a union card is like, and it will show exactly what the proof strips are, the same as on here.

Q. Do you have any blank union cards?

A. No, I have no blanks like that whatever. I requested 50 blanks so the name could be typed in on each member, until I got the card numbers—

Q. The proof strip is a carbon or a duplicate part of this membership?

A. That is right; the name, address, ledger number, and Lodge number.

Q. You can't leave this for the purpose of the record, can you?

1810 A. Well, I have last month's.

Q. There is one for each month?

A. There is, and they are identical, except the color.

Q. There is a different color for each month?

A. That is right.

Q. Except the name, the month, and color, the cards are identical?

A. They are.

Mr. Rissman: I ask that this be marked BOARD'S EXHIBIT NO. 37, and I offer this in evidence.

Mr. Lamfrom: For what purpose?

Mr. Rissman: If the Examiner please—

Mr. Lamfrom: Wait a minute. It is objected to as incompetent, irrelevant, and immaterial, and as establishing nothing here.

Mr. Rissman: This is offered for the purpose of indicating the type of card described by the witness and the type of sheets as described which are sent to him by the national office of the union, indicating the number of members whose applications have been received in that national office from this local.

Mr. Lamfrom: I still make the same objection, take the same position I did before.

Trial Examiner Batten: It will be received.

1811 (Thereupon the document above referred to was marked as BOARD'S EXHIBIT NO. 37 for identification and received in evidence.)

Q. (By Mr. Rissman) So that with the 50 cards that have been submitted recently and the number that have already been returned to you as having been acted upon by the national officer, what is the number of signed application cards

that have been submitted from your lodge of Falk Employees?

Mr. Clark: Just a minute. Will you please read that question? I did not get it.

(The question was read.)

The Witness: A. 622.

Q. (By Mr. Rissman) Together with the 50, how much would that make?

A. That will make about 677.

Q. With the exception of the last 50 that have been sent, you have the other cards in your possession?

A. The 622, yes.

Mr. Rissman: That is all.

Cross-Examination.

Q. (By Mr. Engelhard) Mr. Meindle, these figures you have given us today are as of what date?

A. These application cards, every application card that the figures have been given for here, were all made prior to June 1, 1937.

1812 Q. And what was the situation on May 5th when Mr. Adelman made the demand upon the Falk Corporation at the Eagles' Club for collective bargaining rights?

A. The number of applications on May 5, 1937, was just about the same as it is at the present time, as after the denial was made to grant bargaining rights to the Amalgamated Association, and there have been very few, if any, applications at all for membership in the Amalgamated Association.

Q. Well, do you know the precise number of applications that were on hand on May 5, 1937, the precise number?

A. There were no application blanks sent back from the Grand Lodge at that date; they were still at the Grand Lodge waiting for proof strips to be cut and the stencils to be cut.

Q. Well, answer this question: Do you know how many of them were at the Grand Lodge on that date?

A. There were 600, and, I believe it was five, cards at that time.

Q. 605?

A. About 605 cards.

Q. Now, you say "around 605." Don't you know the exact number?

A. No, I do not.

Q. Of applications?

A. No, I do not.

Q. You were present at the meeting on the 5th of May?

1813 A. I was.

Q. And there was no claim made at that meeting that your organization represented a majority of the employees at the Falk Corporation, was there?

Mr. Rissman: I object to that question, if the Examiner please. We did not go into it on the direct examination of this witness, and we have introduced here a transcript of testimony, at the suggestion of counsel, that contains everything said at that meeting of May 5th.

Trial Examiner Batten: Well, I have read over that transcript, but I don't know as I really can recall how much really was covered at that meeting.

I see no objection to the witness answering if he recalls what happened at that meeting.

Mr. Rissman: May the question be read to him, please?

Trial Examiner Batten: Yes, read the question.

(The question was read.)

The Witness: I don't know if there was or not. I don't believe there was.

Q. (By Mr. Engelhard.) Well, you know, don't you, Mr. Meindle, that your organization did not represent a majority of Falk employees at that time? You know that as a matter of fact, don't you?

Mr. Rissman: I object to the question, as the preceding question was entirely different, as to what occurred at 1814 that meeting.

Mr. Engelhard: Well, here is a man who comes in and gives facts as to what the situation was on May 5, and now I am cross-examining him to see what the basis of his opinion is.

Trial Examiner Batten: Well, I see no objection to his answering.

As I understand, the question is, Didn't this man know, as a matter of fact, that on that date they didn't represent a majority?

Now, if he knows, he may answer.

The Witness: A. I can't answer that question because at that time no other records of the other lodge were available, and, of course, we not knowing whether we had a majority or they had a majority—

Q. (By Mr. Engelhard) Just a moment. What other lodge do you speak of?

A. This other union.

Q. You mean the independent union?

A. That is what they call it.

Q. Well, if you determined whether or not you represented a majority of the Falk employees, would you depend upon what the other organization has, to determine that?

Mr. Rissman: I object to the question, Mr. Examiner.

I am going to object to any testimony dealing with that 1815 May 5th meeting. It was not gone into on direct examination of this witness at all.

He was asked a few questions, the number of employees who designated his lodge, the type of work at that plant, who were eligible for membership, and we did not go into any discussion as to what the demands were for bargaining on May 5th, at the May 5th meeting.

The facts are here, and there is no necessity for going into any other understanding or any other facts.

Mr. Engelhard: Mr. Rissman, may I ask you this question: Your purpose in putting Mr. Meindle on this morning was in order to prove the allegation of the petition, was it not, that this C. I. O. has a majority of the employees of the Falk Corporation? Wasn't that the reason you put him on?

Mr. Rissman: The record will indicate the reason for which he was put on the stand.

Mr. Engelhard: Won't you answer my question?

Mr. Rissman: If you understand that was the reason, then you meet that issue.

Mr. Engelhard: That is why I am cross-examining him.

Mr. Lamfrom: What members of the other organization have—

Trial Examiner Batten: I think he may answer that, to explain the previous statement. As to what relationship that has, that is—

1816 The Witness: They claimed a majority around May 1st, they claimed 900 and we claimed over 600; 9 and 6 are 14; and there were only about 1,300 employees at the plant; so you can't claim a majority with them very much.

Q. (By Mr. Engelhard) Precisely. Now, do you know whether or not there have been duplications?

A. That I don't know.

Q. Don't you know, as a matter of fact, that some of the men had membership in both organizations?

A. No one ever told me they had.

Q. Don't you know that some men hold cards in both organizations?

A. Nobody ever told me that. I don't know; I haven't seen their cards or anything. Our cards and their cards have never been duplicated, so I can't answer that question.

Q. Now, do you know how many of the applications that were made for membership in your organization have been subsequently—Strike that.

Do you know how many applicants for membership in your union have subsequently made application in the independent union?

A. I do not.

Q. You don't know if there are any?

A. I don't know if there are any.

Q. Do you know whether any of the members of the 1817 independent union subsequently made applications in your union?

A. No, I don't know.

Q. You don't know of a single employee who left one union and joined the other?

A. No one ever told me that they left our union or their union, and I have not had one application withdrawn from our union.

Q. Now; as I understand your testimony, on May 5, 1937, the largest number that you can account for is 605?

A. Approximately; yes, sir.

Q. Now, when you say "approximately", how nearly correct is that figure?

A. Well, within a few.

Q. Then give me the lowest number that you would be willing to swear to.

A. Possibly about 585 or 590.

Q. Now, is it 85 or 90?

A. Suit yourself; I don't know which, one or the other of them is possible.

Q. That would be the lowest number you would be willing to swear to?

A. That is right.

Q. And what is the highest number you would be willing to swear to.

A. I believe 610 or 615.

1818 Q. But the fact is you don't know whether you had 585 or 615, anywhere between those two numbers?

A. Anywhere between those numbers.

Q. Do you know how many persons were employed at the plant on the 15th of May who were eligible to your union?

A. Well, according to the figures that were given around May 1, I would say that there would be about 800 eligible.

Q. To join your union?

A. To join our union.

Q. 800?

A. About 800.

Q. Do you know how many people were employed at that plant who were eligible to join the independent union under its rules and regulations?

A. Well, possibly about 1,000, probably more. I don't know what their rules and regulations are.

Q. Now, Mr. Meindie, so far as you, as an officer of Local 1528, is concerned, you do not know whether or not on the 5th of May the C. I. O. membership was a majority of the workers in the Falk plant who were eligible to join your union?

A. Taking in the whole plant, including the office—

Q. I say, those who were eligible to join your union; do you know, as a matter of fact, whether or not you had a majority of that type of employees?

A. I would say "yes", we did have that majority.

1819 Q. That is just based upon a surmise, is it not?

A. Not according to the men that were working in the plant, no.

Q. Well, did you get your information from the persons you talked to in the plant?

A. No.

Q. From whom did you get your information as to the number of employees in the Falk Corporation on May 5th?

A. Well, I worked there; I am a pretty good judge of how many fellows work and who do not.

Q. Well, how many worked there on May 5th?

A. I would say there wasn't over 800 in the plant proper that would be eligible to our union.

Q. Did you count them?

A. I did not.

Q. Then how do you know who was on the pay roll?

A. Well, I will tell you why. Mr. Green gave the figures this morning of just how many in all three machine shops on the day shift as 300 men.

Q. What date did he give those figures?

A. That was the day shift, that was the work he said.

Q. That was in connection with a period of time—that was an old period of time?

A. No, that was talking about the present.

Q. Don't you know he was not talking about the
820 present, that he was talking about the shift in the machine shop at the time Mr. Kinch worked there?

Mr. Rissman: The record will show that.

Trial Examiner Batten: I don't assume that this witness can testify as to the exact number that were employed there, Mr. Engelhard. I assume that, probably, is just his best guess.

Mr. Engelhard: That is what I assume; it is his best guess.

Q. (By Trial Examiner Batten) Is that right?

A. That is right.

Q. You never went around and counted each individual man?

A. Well, that would be kind of hard.

Q. In other words, your observation of being around the plant is that there were about 800 men there?

A. That is right.

Mr. Rissman: The company is in a position to introduce the facts as to the number of men at that time.

This man gave the fact as to the number in his union; whether or not he thought them a majority does not make it so.

Mr. Engelhard: I am asking him as an officer of the union whether he knew they had a majority.

There is an allegation in the complaint that the C. I. O. had a majority and that we were legally obligated to recognize that union as the exclusive bargaining agent.

821 Trial Examiner Batten: I think, Mr. Engelhard, that the witness testified clearly that it was from his observation.

Mr. Engelhard: Yes.

Trial Examiner Batten: As it was around the plant that we thought there were 800 men.

Mr. Lamfrom: We will introduce evidence of the number of men at the plant on May 5th.

Trial Examiner Batten: What is that, Mr. Lamfrom?

Mr. Lamfrom: I say, we will introduce evidence of the number of men.


Trial Examiner Batten: I think that settles it. I don't imagine there is any employees here who can testify to the number of men on the pay roll.

Q. (By Mr. Engelhard) Have you Mr. Landry's application card?

A. Mr. whose?

Q. Mr. Landry's.

MICRO CARD

TRADE MARK 

22

39



1382

65



A. I believe I have it here.

Mr. Engelhard: I ask at this time, Your Honor, that that application card be withdrawn and marked as an exhibit.

Q. (By Trial Examiner Batten) Let me ask you this question: Are these records you have with you here public records?

A. They are not; they are confidential records.

Q. Are they open for the inspection of the public or anyone else?

1822 A. They are not.

Trial Examiner Batten: Well, if they are confidential records I certainly shall not require you to produce them any more than I would require the company or the corporation to produce any of their confidential information; so I certainly will not require him to produce any of his records.

Mr. Engelhard: He need not produce them, but will you get out Mr. Landry's card so that we can get the date of his application?

Trial Examiner Batten: I have just said I would not require him to produce any of them.

Mr. Engelhard: He need not produce them; all I want is the date of Mr. Landry's application.

Trial Examiner Batten: Ask him whether he objects.

Q. (By Mr. Engelhard) What is the date of Mr. Landry's application?

A. If Mr. Landry wishes it to be made, I will grant it; otherwise, I will not.

Mr. Lamfrom: That is out of the ordinary; that is a rather novel situation.

Trial Examiner Batten: There is nothing novel about it because the Board has found by experience that any labor organization, if it does not care to disclose the names and confidential records of its members, does not have to do so, because the Board has found through experience that that
 1823 is one of the things oftentimes that an employer very much desires.

Mr. Lamfrom: We know Mr. Landry is a member of this organization; we know he is a member of your organization.

Trial Examiner Batten: If it is a confidential record, he does not have to disclose any of it, unless he so desires, and the trial examiner will not request him to do so.

Mr. Lamfrom: What I am asking is that the union representative here disclose in the record the date of Mr. Landry's application.

Mr. Landry was asked when he signed the application and he couldn't give any definite time.

Trial Examiner Batten: Mr. Landry—

Mr. Landry: Yes, sir.

Trial Examiner Batten: Do you care to have the secretary disclose any information on your card?

Mr. Landry: No.

Mr. Lamfrom: Mr. Landry, do you object to having the date of your application disclosed?

Mr. Landry: At the present moment, I would.

Mr. Lamfrom: I move, Mr. Examiner, that the witness be required to disclose, if he knows; or if he can ascertain the information from any source that he has available, the date of Mr. Landry's application to become a member of the C. I. O.

Mr. Rissman: If the Examiner please, the Examiner 1824 has ruled on that matter, and I further object to the question on the ground it is incompetent, irrelevant, and immaterial, as to what date Mr. Landry joined the C. I. O., for any purposes of this complaint and this hearing.

1825 Mr. Lamfrom: It becomes very material on the question of Mr. Landry's veracity on the witness stand yesterday or the day before, he testified he left the meeting of the Independent Union and went over to the C. I. O. sometime in April and signed an application card to the C. I. O.

I submit, if the Examiner please, that the respondent here is denied a right that is a recognized right in the courts of law and equity of the United States, and that the production of information which a witness has, which is not what is known as privileged bit of information, when it is necessary in the interest of justice to establish a fact in the trial of an action or proceeding of this kind, that if that right is denied, this respondent is deprived of a substantial right contrary to law.

Mr. Rissman: That is a beautiful speech, but it does not mean a thing.

First, he misstates the record. Mr. Landry did not testify as counsel indicated.

Secondly, no right is being denied the respondent in this matter because it is entirely immaterial as to the date of his application for membership.

I think the Examiner having ruled on the question, it should not be necessary for us to go into it any further.

Mr. Lamfrom: May I ask a question to get a little light on this situation?

1826 What is the rule that establishes this to be a confidential record, on the ground that it is not a public record?

Trial Examiner Batten: The Trial Examiner has no further remarks of any kind to make except those that are now in the record.

Mr. Lamfrom: Well, I understand our motion to have this witness directed to inform us either from his records or any other information that he has, documentary or otherwise, the date of Mr. Landry's application into this union is denied?

Trial Examiner Batten: The Examiner has passed on that question.

Mr. Lamfrom: I do not want to be discourteous to the Examiner, but I want to be sure I understand the ruling.

Trial Examiner Batten: Will you go back please to the beginning of this matter and read the record.

(The record was read as directed.)

Mr. Engelhard: Now, I ask that the officer of this union disclose, if he knows, the date of Mr. Landry's application.

Mr. Rissman: I object to that question as entirely immaterial as it is stated. The Examiner has already ruled that the witness need not disclose any information about Mr. Landry's application.

Trial Examiner Batten: He may answer the question if he knows, without any reference to the card, as to when it was.

My ruling pertained to the production of the card or the disclosure of the information on it.

Now, if he knows of his own information—

Mr. Rissman: I object to the question on the ground it is immaterial.

Q. (By Trial Examiner Batten) Do you know the date of Mr. Landry's application?

A. I do not. The cards are here exactly as I have got them back, I never went through the cards or never filed them alphabetically.

Mr. Engelhard: Then I ask that this officer that is on the stand inform himself of the date of Mr. Landry's application without disclosing the card.

Trial Examiner Batten: Well, I think that is substantially the same thing that the Examiner has ruled on.

Mr. Engelhard: That, your Honor, certainly does not disclose any privileged information, the date of a man's application, there is nothing holy about that.

Trial Examiner Batten: Mr. Landry stated he did not care to have the officer disclose any information on his card, and that is my ruling and I don't intend to change it.

Q. (By Mr. Engelhard) Will you produce the cards showing the membership that you had on May 5th?

Mr. Rissman: I object to the question as entirely immaterial, whether he produces them or not.

Trial Examiner Batten: Well, I think the witness has a perfect right to answer the question, whether he will or not.

The Witness: These cards can be shown and accounted for if permission is got from the International Secretary at Pittsburgh, Pennsylvania. These cards are his property; they are left in my custody, and I cannot show them cards unless permission is gotten from him.

Q. (By Mr. Engelhard) But you could produce the cards you have now in your possession right now in this court room.

A. I have them in my possession.

Q. But you refuse to produce them?

A. I refuse to produce them.

Mr. Lamfrom: I ask that the Examiner require "Mr. Landry" to produce the membership cards of the union showing the membership on May 5th or thereabouts, 1937.

Trial Examiner Batten: The Examiner has previously ruled on the same question.

Mr. Clark: You mean "Mr. Meindle"?

Mr. Lamfrom: I beg your pardon.

Mr. Clark: You mean "Mr. Meindle"?

Mr. Lamfrom: I mean, will the Examiner require Mr. Meindle to produce the membership cards showing the membership of this union on or about May 5th, 1937.

1829 Mr. Rissman: I object to the statement. The Examiner has indicated his ruling with reference to the records of the union, and the witness has stated that he refuses to produce them without authority from the General Secretary in Pittsburgh.

I further object for the reason that these records were not subpoenaed by the respondent.

Trial Examiner Batten: Well, that objection does not amount to anything, Mr. Rissman. The records are here and

the witness has them on the stand, so that, as to that objection, I don't think there is anything to that objection, but I have made my ruling with respect to the union records and it stands as I have made it, and I don't intend to make any other ruling on the matter.

Q. (By Mr. Lamfrom): Have you the records of the membership—or the membership cards of the union showing the membership as of today with you?

A. As up to date?

Q. Yes.

A. No, I haven't.

Q. Do you have the cards showing the membership as of today in connection with these cards which are down in Pennsylvania? Is that where the head lodge is?

A. Yes, sir, that is right.

Q. You have those cards, membership cards with you?

1830 A. The applications and proof strips.

Mr. Lamfrom: Yes. I ask that the Examiner direct the witness to produce the membership and other records indicated by the witness' testimony, showing the membership in number from the best evidence and sources and records of the union, that he produce them now.

Mr. Rissman: The same objection.

Trial Examiner Batten: The same question has been asked the witness several times and I have made the same ruling. I have ruled with respect to these records, and that ruling stands.

Mr. Lamfrom: Then I move that all the evidence that this witness has given with respect to the number of members in this union during all the period covered by his testimony be stricken from the record, as not being the best evidence or best method, considering the fact that the records exist and can be produced and can be inspected and can be used for the purpose of cross examination, is no evidence at all.

Trial Examiner Batten: It may be stricken.

Mr. Rissman: I resist that motion if the Examiner please.

The witness has testified from his knowledge as secretary of the union as to the number of members on these various dates and he has testified also from the application cards received by him from the employees of the Falk Corporation, which application cards he has with him, application cards that he has examined at one time or another, and has information indicating the number of cards there are.

Trial Examiner Batten: Well, the Trial Examiner has ruled on the motion.

Q. (By Trial Examiner Batten) May I ask you a question, Mr. Meindle?

A. You may.

Q. Is your organization willing to have an election in this plant supervised by the National Labor Relations Board?

A. I believe it would be. Permission would have to be had from the president, as I can't—

Q. Mr. Landry?

A. Mr. Landry.

Trial Examiner Batten: Mr. Landry, would your organization be willing to have the National Labor Relations Board conduct an "examination" in this plant?

Mr. Landry: An examination?

Trial Examiner Batten: An election.

Mr. Landry: An election?

Trial Examiner Batten: Yes.

Mr. Landry: I am quite certain they would be.

Trial Examiner Batten: Are there any further questions?

Q. (By Mr. Lamfrom) Would that be so, would your opinion as to whether or not the union would consent 1832 to an election in this plant supervised and conducted by the National Labor Relations Board, would that opinion be based upon the fact that it might also order on the ballot the Independent Union of Falk Employees?

A. I think that question was brought up and threshed out with a stipulation in the room over here—

Q. (By Trial Examiner Batten) The question is, Mr. Meindle, if the National Labor Relations Board determined that the Independent Union and the C. I. O. should both be on the ballot, would your answer be the same with respect to an election?

A. My answer I believe would be yes.

Mr. Lamfrom: May we ask, Mr. Landry, the president of the union, the same question?

Trial Examiner Batten: Mr. Landry, if the National Labor Relations Board as the result of hearing the evidence on this petition and complaint, were to issue its order or certify an election when necessary, and on the ballots were to appear the three organizations, the A. F. of L., the C. I. O., and the Independent Union, would your organization still be in favor of that election?

Mr. Landry: Perfectly agreeable.

Mr. Lamfrom: All right, that settles that.

Mr. Engelhard: Well, if that is the situation, Mr. Examiner, may it not be well for counsel representing all 1833 parties to withdraw with the Examiner now and see whether a stipulation can be entered into?

Trial Examiner Batten: No, I am not in favor of any stipulation at this stage of the proceeding.

I sat in on one conference at which I think counsel for respondent made a proposition which was very fair and reasonable at that time, but at this stage of the proceedings I would not be willing to listen to any kind of stipulation or settlement of this case.

Now, you may go to Mr. Clark, who is the Regional Director, and who has the right and authority to settle cases.

I am not here to settle cases; I am here to hear cases, so I would not care to enter into any proceeding for a settlement of the case.

Mr. Lamfrom: May it appear, Mr. Examiner, that the stipulation referred to that the respondent entered into was one over which—

Trial Examiner Batten: No, I said suggestion.

Mr. Lamfrom: Suggestion over which—really concerned a matter over which it would have no control.

Trial Examiner Batten: I realize that.

Mr. Lamfrom: But the National Labor Relations Board—

Trial Examiner Batten: I realize that.

Mr. Lamfrom: And that the respondent did not go back from that suggestion or stipulation, whatever you may 1834 call it.

Trial Examiner Batten: I did not mean to imply that the respondent had made a proposal, Mr. Lamfrom, which they later withdrew from.

I simply used that to indicate that at the beginning of the case there was a suggested proposal of settlement.

Mr. Lamfrom: That is right.

Trial Examiner Batten: But the Trial Examiner at this late stage of the proceedings does not feel that he should waste any more time.

Now, after five o'clock if you want to get in touch with Mr. Clark, the Regional Director, he probably would be glad to effect a settlement, but I am here for the purpose of hearing the evidence.

Mr. Lamfrom: Is he in the city?

Trial Examiner Batten : I understand he is back from his vacation today.

Mr. Engelhard: Now, let's see what is in the record.

Do I understand that all the testimony Mr. Meindle gave regarding the number of people who belonged to his organization and what percentage they are, if any, of the number of employees, that is all stricken?

Trial Examiner Batten: Well, you know as much about the record as I do.

Mr. Lamfrom: That is perfectly clear, the Examiner's ruling is clear to me.

Trial Examiner Batten: Mr. Lamfrom made a motion to strike a certain matter from the record, and I granted his motion.

The Witness: Mr. Examiner, may I put in an addition on my answer to Mr. Engelhard?

Trial Examiner Batten: Which answer?

The Witness: About being agreeable to vote on an election?

Trial Examiner Batten: You may, if you have any statement.

The Witness: After a decision is handed down by the National Labor Relations Board we will then be agreeable to an election being conducted by the National Labor Relations Board, after their decision is handed down as to the respective names that will be on the ballot.

Q. (By Trial Examiner Batten.) In other words, if the National Labor Relations Board, as I said before, finds an election should be conducted and that on the ballot should appear the names of the three organizations, that election then will meet with your approval?

A. That is right.

Q. Well, if they find that only one name should appear on it, will it still meet with your approval?

A. That is right.

1836 Q. Or two names?

A. Or two.

Q. In other words, whatever the conditions attached to the order are, your organization will accept them?

A. That is right.

Mr. Rissman: If the Examiner please, this motion of Mr. Lamfrom that has been granted, does not as I understand, extend to any testimony of Mr. Landry today other than the number—

Trial Examiner Batten: Mr. Landry?

Mr. Rissman: Mr. Meindle, other than the testimony he has given about the number of people in his organization.

Trial Examiner Batten: Don't ask me to go back over the record. I cannot go back over the record.

Mr. Rissman: May I have the motion read?

Trial Examiner Batten: If you want to take a recess and have the reporter read the motion to you, all right.

Mr. Rissman: All I want was this motion.

Trial Examiner Batten: We will take a few minutes recess. (A short recess was taken.)

Trial Examiner Batten: I believe we are ready to proceed, gentlemen.

Q. (By Mr. Lamfrom.). Do you know how many men whose applications you now have in your file, whatever 1837 you want to call it, are not now employees of the Falk Corporation?

Mr. Rissman: I object. Just a minute.

I thought counsel had moved to strike all the testimony with reference to the number of members. This seems to be a bit inconsistent. I mean, if the testimony with reference to the number of members had been stricken, what difference does it make who are no longer employees.

Mr. Lamfrom: Well, you know many years ago a poet said, "Inconsistencies are a jewel."

If this is inconsistent, why, it is probably a jewel.

Mr. Rissman: Stick to the facts, and not poetry.

Mr. Lamfrom: I don't think it is inconsistent at all, Mr. Rissman. However, if Mr. Batten does not feel the question should be answered, of course he will rule that way.

Trial Examiner Batten: As far as I am concerned he can answer it. It may be a jewel, but if there is no objection to his answering it, he may answer.

Mr. Lamfrom: Well, I will put it differently—strike it out.

Q. (By Mr. Lamfrom.) Do you know how many members of the union, and by "union" I mean this union involved in this case, the C. I. O. union, are now no longer employed at the Falk Corporation?

A. Three, I believe.

Q. Three?

1838 A. That is all that I know of.

Q. That is your answer?

A. That is my answer.

Mr. Rissman: That is all.

The Witness: And they still belong to the lodge, because they have not withdrawn.

Mr. Rissman: That is all.

Q. (By Trial Examiner Batten.) Might I ask a question there, please?

A. Yes.

Q. How many was it you stated as of yesterday here, had filed applications or indicated a desire to join the C. I. O.?

A. We haven't the applications yet, but from the authority I have got, after this case is settled and a decision is handed down—

Q. Do you know how many actual application cards or these strips, whatever you call them—

A. Oh, I have strips here of 622; I have filed requests for about 50 more.

Q. What do you mean by "filed requests"?

A. Well, this here card, I will show you.

Q. Just tell me what you mean?

A. It is the union card. There have been cards lost in transit, the fellows have filed the cards but no union cards came back from them, no union cards, and as the records were being gone over I found that there was no union card issued for these men, and I made application for the union card for these men.

Trial Examiner Batten: That is all. Mr. Clark?

Mr. Lamfrom: That question you asked him with respect to application cards is not inconsistent with your ruling before, is it?

Mr. Rissman: Are you quoting poetry again?

Mr. Lamfrom: No, I changed my question. I merely asked something that is already within his own knowledge, or extracts from the application cards. I didn't go into—I withdraw that question.

Trial Examiner Batten: I don't know just what you mean.

Mr. Lamfrom: You know what you mean.

Trial Examiner Batten: I had no thought in mind of trying to put into the record something which I had stricken.

The Witness: Well, that question was asked and answered.

Trial Examiner Batten: Is that what you mean?

Mr. Lamfrom: I didn't think you knowingly had, but I was wondering whether the effect of the question was really in effect now overruling it.

Trial Examiner Batten: Well, I had no such thought in mind.

Mr. Lamfrom: That is perfectly clear now.

1840 Trial Examiner Batten: Mr. Clark.

Q. (By Mr. Clark.) When does a man become a member of the C. I. O.?

A. What?

Q. When does a man become a member of your organization?

A. The minute he signs his application card.

Q. Without paying any money?

A. Without paying any money.

Q. And if he signs an application for another organization does he cease to be a member of yours?

A. He does not.

Q. He can belong to your organization and belong to another one, too?

A. He can unless he is suspended, transferred or resigns; the reason of that withdrawal, or any cause like that—

Q. Do you know whether he agrees in the application not to make application for membership in any other organization?

A. He does not.

Q. He can belong to another rival labor organization and still be in good standing in yours?

A. I didn't say good standing.

Q. What do you mean?

A. He can still belong to—

Q. You have two types of members, one just belongs and one that is in good standing?

1841 A. No, we have some that a lot of them consider very good standing, but who are not in good standing.

Q. Is a man in good standing if he never pays any dues?

A. Yes, sir.

Q. Is he a member although he does not pay any dues?

A. Yes.

Q. The minute he signs an application he becomes a member of the C. I. O.?

A. Will you repeat that?

Q. The minute he signs an application he becomes a member?

A. That is right.

Q. And unless he is suspended, dies or resigns, he is always a member of your organization?

A. Always.

Q. Now, is it your idea, Mr. Meindle, that there were 1400 employees in the Falk plant at the time in May, May 5th?

A. No.

- Q. How many do you think there were?
- A. 1300.
- Q. 1300?
- A. 1300.
- Q. Now, on direct examination you said that the independent union claimed 900 and you claimed 600, and that the total was 1400?
- A. That is right.
- 842 Mr. Rissman: That was on cross examination.
- Q. (By Mr. Clark.) You mean that?
- A. Yes.
- Q. Does 9 and 6 add up to 14?
- A. That is right.
- Q. (By Mr. Rissman.) Do you want to change your answer now?
- A. Yes, I will change that answer, I will change that answer to 1500.
- Q. (By Mr. Clark.) Your arithmetic was a little bit bad?
- A. Sometimes.
- Q. Now, Mr. Meindle, on April 23rd have you any recollection of how many members belonged to your organization?
- A. No.
- Q. I mean April 23rd this year?
- A. No.
- Q. You have no recollection at any particular date as to how many applications you had filed?
- A. Yes, I have, around May 5th.
- Q. That number was 622?
- A. No.
- Q. How many?
- A. It was anywhere between 585 and I believe 610, or 615.
- Q. Do you have rules and by-laws for that organization?
- A. Yes, we have rules and by-laws.
- Q. Do you have a copy here?
- 843 A. No, I haven't.
- Q. Is there a copy available?
- A. There is not.
- Q. You mean there is not any available, or you won't produce it?
- A. I said there is not any available.
- Q. You have never read them?
- A. I never have.
- Q. Have you ever had any?
- A. No, the rules and by-laws, we follow our ritual.

Q. You mean ritual, I take it?

A. Ritual.

Q. Now, where does the ritual come from?

A. From the Grand Lodge at Pittsburgh.

Q. Do you have a copy of that?

A. Yes, I have.

Q. Don't you have a constitution?

A. The constitution, we follow our ritual.

Q. So that the only rules that govern your organization at the Falk plant is the ritual?

A. The ritual, and as the laws are laid down from our Grand Lodge.

Q. What do you call those?

A. They are just parts of the Grand Lodge, they are just branches of the Grand Lodge.

1844 Q. The rules as laid down by the Grand Lodge, what do you call those?

A. Them are what we follow.

Q. What do you call them?

A. Just rules, all those rules that will be set down by the Grand Lodge will finally be wove into what you call the rules and by-laws.

Q. So that at the present time your organization has no constitution defining who is eligible for membership?

A. Except as our own local wants to accept them.

Q. Is your local the judge as to who shall belong?

A. It is our local, our own local, yes.

Q. No matter what the Grand Lodge says, your local governs?

A. If we don't want to accept a member we don't accept him.

Q. No matter what his capacity is with the plant?

A. Yes, we have laws regarding who is eligible and who is not.

Q. Well, where are they from?

A. They are from Pittsburgh.

Q. Do you have a copy of those?

A. No, I haven't.

Q. As a matter of fact, Mr. Meindle, this organization of course has been operated by people other than employees of the Falk plant at their meetings, hasn't it?

A. It has not.

1845 Q. Well, who tells you what to do?

A. Nobody.

- Q. And you have no constitution to follow?
- A. No.
- Q. All you have to go by and all you have to be governed by is the ritual?
- A. The ritual and rules as they are handed down from the Grand Lodge.
- Q. I am asking, Mr. Meindle, do you have copies of those rules as they are handed down?
- A. Yes.
- Q. What form are they in?
- A. Writing.
- Q. Are they printed?
- A. They are typewritten.
- Q. You get those from time to time?
- A. I do.
- Q. And they may be changed from week to week?
- A. They may.
- Q. And your lodge has nothing to do with making those changes?
- A. We would have if we requested any.
- Q. But you haven't requested any?
- A. We haven't requested any.
- Q. Now, who determined who was eligible for membership in your organization?
- A. As to the foremen, assistant foremen, men in a supervisory capacity, that is handed down by the Grand Lodge. The workers of our plant, we judge that ourselves.
- Q. You mean you judge who is a foreman and who is not?
- A. We know, we don't judge, we know that.
- Q. Yes, so the local has nothing to do with who was eligible for membership in this organization?
- A. Yes, request can be made to the Grand Lodge to hand down a decision on that.
- Q. Have you made any such request?
- A. No, we haven't, we haven't found it necessary.
- Q. You accepted the rules that certain people were eligible for membership in your local?
- A. We did not make no rules whatsoever.
- Q. I understand, and you have none to be guided by?
- A. Yes, rules to be guided by.
- Q. That is rules that you said come from Pittsburgh?
- A. That is right.
- Q. And you have no constitution?

A. We have no constitution as yet.

Q. And you have no by-laws?

A. No by-laws except our ritual.

Q. Now, by this ritual you mean what must be gone through with to take in members?

1847 A. Yes, and line up officers.

Q. Is that a part of the ritual?

A. That is a part of the ritual.

Q. So you have officers in this organization?

A. Sure.

Q. Now, did I understand that you said that you know of no man who joined the Independent Union ever making application for yours?

A. I do not.

Q. You do not know of anyone?

A. I do not know.

Q. Who has joined?

A. I do not.

Q. You know of no one who has changed from your organization to the Independent?

A. You just asked me that question.

Q. Then from the Independent to you?

A. No.

Q. Are you in charge of these applications?

A. I am.

Q. Do you know a man by the name of John Wolf?

A. I don't know.

Mr. Clark: I guess that is all.

Q. (By Mr. Engelhard.) Mr. Meindle, who decided that the draftsmen were not eligible to join your union?

1848 A. Who decided that?

Q. Yes.

A. We decided among ourselves with the aid of Mr. Adelman.

Q. Who decided that the clerical help was not eligible to join your union?

A. We decided that among ourselves with the aid of Mr. Adelman.

Q. Who decided whether the timekeepers were eligible to join your union?

A. That also was decided among ourselves with the aid of Mr. Adelman.

Q. The draftsmen were not consulted about it?

A. They were not.

Q. And the clerical help was not consulted about it?

A. They were not.

Q. And the timekeepers were not consulted about it?

A. They were not.

Q. They could not join your union if they wanted to?

A. That is right.

Q. I understood that in reply to a question from Mr. Clark you said you do not know what the number of members in the C. I. O. were on the 23rd—the number of members was on the 23rd of May—the 23rd of April, I mean?

A. No.

Q. You haven't the least idea?

1849 A. No.

Mr. Engelhard: That is all.

Redirect Examination.

Q. (By Mr. Rissman.) Mr. Meindle, will you tell us why is was decided to exclude the employees from the different departments just mentioned by Mr. Engelhard?

A. Yes, all of the clerical workers, the draftsmen and timekeepers' problems are so much different than ours, it being a different type of person altogether, it would be rather hard for us to go and bargain for them, where at the shop proper it is so much easier because we understand each other's problems so much better than we would understand theirs.

Mr. Rissman: That is all.

Trial Examiner Batten: Mr. Clark?

Mr. Lamfrom: Well, do you understand the general obligation,—oh, excuse me, pardon me, Mr. Clark.

Recross Examination.

Q. (By Mr. Clark.) Mr. Meindle, do you know of any men who are working in these various departments that were excluded from membership, that you have just related, who were approached with applications and asked to join?

A. I don't know?

Q. There may have been some?

A. There may have, I don't know.

1850 Q. Now, when you say these men that you excluded were a different type person, what do you mean?

A. Well, their thinking is altogether different than ours; their hours are different from ours; they act different than we do, and every thing else.

Q. Your organization only wants to represent people in the production department at the Falk plant, is that right?

A. In the plant proper.

Q. What do you mean by that?

A. I mean all departments outside of the draftsmen, engineers, main office and timekeeper's office.

Q. Do you feel that all of those people think alike?

A. The majority of them do, yes.

Q. But you don't know which way they think.

Mr. Rissman: I move that be stricken.

Trial Examiner Batten: On what question, Mr. Clark?

Mr. Clark: A lot of them.

Q. (By Mr. Lamfrom.) Well, your union is formed for the purpose of collective bargaining with the employer, is it not?

A. That is right.

Q. And to get whatever benefit in a legitimate way the union can get for its members, is that right?

A. That is right.

Q. And primarily in your relationship with the employer you are concerned with employment, wages and working conditions, aren't you?

A. Well, it is kind of hard for a fellow working in a shop—

Q. Now, are you concerned with those matters?

Mr. Rissman: He started to answer.

Mr. Lamson: He is anticipating.

Mr. Rissman: Let him finish his answer.

Mr. Lamfrom: The question—

Trial Examiner Batten: Read the question.

(The record was read.)

The Witness: Well, their problems are so much different than ours.

Q. (By Mr. Lamfrom.) I am talking about your purpose.

A. My purpose?

Q. Yes.

A. My purpose is to bargain and try to bargain for my fellow workers for better conditions, hours and wages, stuff like that.

Q. Yes. Now, what is there that is different with reference to bargaining for those same objectives for the draftsmen?

A. Well, there is a lot of difference.

Q. What are they?

A. Well, we are altogether a different type of people than they are.

1852 Q. I know, but they work for wages, don't they?

A. They probably work for wages or work for a salary.

Q. Whatever it may be, for remuneration, is that right?

A. Here is the thing—

Q. Is that right?

Trial Examiner Batten: Let him go ahead.

Mr. Lamfrom: But when I say "Is that right", he says "Here is the thing"—

Trial Examiner Batten: He was going on and explain. Go ahead.

The Witness: We have one way of thinking and they have another way. They come through the shop and they don't even look at us, we are dirty, we get dirty.

Q. (By Mr. Lamfrom.) You are a little bit class-conscious?

A. No, I am not class-conscious; I have some very good friends working in the office that are not afraid, but the majority don't want to recognize you because you are a worker.

Q. These same men that apparently don't want to recognize you, or some of them, they work for wages or salary?

A. Yes, sir.

Q. And they work a good number of hours?

A. That is right.

Q. And they work under certain conditions?

A. That is right.

1853 Q. Why is it not possible for your union to represent these employees in the other crafts who are, after all, attempting to achieve the same object that you are, namely, better wages, better working conditions and more satisfactory hours?

A. We just don't want to bargain for them.

Q. You could bargain for them?

A. We don't care to bargain for them.

Q. I say, if you represented—pardon me, Mr. Rissinan—if you represented the entire Falk Corporation employees you could, as an entity, bargain for them, couldn't you?

A. I don't know how successful it would be if we did.

Q. Why do you say you don't know how successful it would be if you did, why do you say that?

A. Because without understanding their conditions and our conditions, their way of thinking and our way of thinking, I do not believe we could agree on anything that they would ask us to go and bargain for.

Q. Well, you tell Mr. Landry, don't you, the different conditions that exist in the plant, that you want him to bargain with the employer about, don't you?

A. Yes, but we see that condition.

Q. Don't you—

A. We see that condition; we don't see their condition.

Q. All right. Why couldn't these other crafts tell Mr. Landry what their conditions were and have Mr. Landry 1854 or your organization bargain for them?

A. Because we don't see their conditions.

Q. Why couldn't you see their conditions by going around through the drafting room and the clerical force and the other units here?

A. Well, I will tell you, if you are full of sand, dust and dirt, and everything else, I don't believe the office would want you to walk through that office looking over you there, and ask them questions about this and that, and that is why it would be hard.

Q. They could tell you what their conditions were.

A. How would we know they were not asking something we can't get.

Q. Before you make a demand upon the employer do you want to be pretty sure the demand is going to be met?

A. We know what they are asking for in the shop, but we don't know what they are asking—what they would ask us to do for them.

Q. You could use your best endeavors to get what they requested, could you not?

A. Just like someone else's conception of working upon air conditioning machinery in the machine shop because the air is dry, they may come down and tell us they want ice water because they are thirsty.

Q. You could use your best endeavors to represent 1855 the draftsmen, go to Mr. Falk or some member of the company and say, "Now, Mr. Falk, you are paying your draftsmen so much and we find that Allis Chalmers Company pays so much and they work under the same general conditions, as we are informed, and therefore we would like

to discuss with you the rates, wages and salaries for your draftsmen? you could do that, couldn't you?

A. No, I don't think we could.

Q. You couldn't do that for any other crafts but the plant employees?

A. That is right.

Q. And you don't want to?

A. I wouldn't say that, I say we just can't do it.

Q. A little while ago if I understood your testimony you didn't want to?

A. Well, we don't want to.

Mr. Lamfrom: That is all.

Q. (By Mr. Rissman.) The reason you don't want to is because you feel you can't?

A. Because we can't bargain for them successfully as we can for the workers themselves.

Mr. Rissman: That is all.

Q. (By Mr. Lamfrom.) Well, do you feel, however, that bargaining for them would interfere with your ability to bargain for your own employees?

1856 A. Yes, I think it would, because we don't understand their problems.

Q. I mean if you didn't understand their problems but acquired as much information as you could concerning their problems and you did bargain for them, how would that interfere with you in bargaining for your own crafts?

A. I don't believe our craft would want to bargain for them.

Q. Answer my question, if you did bargain for these other crafts how would that interfere with bargaining for your own crafts?

A. Well, that question I can't answer.

Mr. Lamfrom: I didn't think you could. That is all.

Q. (By Mr. Clark.) Mr. Meindle, the reason you say you don't feel you could do a good job representing the draftsmen and other people is because you are not familiar with their problems, is that right?

A. That is right.

Q. And the reason you feel you can successfully represent your own group is because you, as a worker, in that group, know of their individual problems?

A. That is right.

Q. And you feel that you don't need any outside suggestions and help to deal with—or to tell you what your problems are?

Mr. Rissman: I object to that question as entirely
1857 immaterial, what he feels. He has testified as to the
facts at the plant.

Trial Examiner Batten: I think he may answer the question.

What do you mean by "outside"?

Q. (By Mr. Clark.) Anyone outside of the group that
is eligible at the Falk plant.

Trial Examiner Batten: You mean a business agent?

Mr. Clark: Yes.

Trial Examiner Batten: Or somebody representing the
International Union?

Mr. Clark: Yes.

Q. (By Trial Examiner Batten.) Do you understand the
question?

A. I understand the question.

Trial Examiner Batten: You may answer.

The Witness: If we want advice we go and ask Mr. Adelman for advice or whoever is in charge of the office here in town, and if we don't need advice, if we can handle the problem without any advice, we handle it ourselves.

Q. (By Mr. Clark.) Well now, what is there about your problems at the Falk plant that Mr. Adelman is familiar with?

A. Well, I don't believe there is any problem in our plant
itself that Mr. Adelman is familiar with.

1858 Q. He gets his information from you?

A. More or less of it, yes; if it is any information
about the plant he gets it from us.

Q. And all the problems that you have to deal with are
similar to yours and other officers of your organization?

A. That is right.

Q. And still you feel that you should go to an outsider
to ask him what to do about it, is that right?

A. If we want to go ask we will, and if we don't, we won't.

Q. Why don't you feel competent to represent the drafts-
men who might come to you and tell you what their problem
is?

A. I answered that question already.

Q. I don't believe you did. What was your answer?

Mr. Rissman: Answer it then.

A. Difference in conditions and difference in the two types
of people.

Q. (By Mr. Clark.) Well, the only information you might

get if you did represent the draftsmen would come from them themselves?

A. It would come from them themselves.

Q. So that you would be then in the same position that Mr. Adelman is now for your group?

Mr. Rissman: I object to that question.

Trial Examiner Batten: I don't see any objection to letting him answer.

1859 Mr. Rissman: We don't know what Mr. Adelman's experience is in the matter.

Trial Examiner Batten: Well, I suppose if he wants to go to somebody for advice he can go. The lawyers certainly would not do very much business if nobody came to them for advice.

The Witness: Will you read the question, please.

(The question was read.)

Mr. Rissman: The form of the question is bad.

Q. (By Trial Examiner Batten.) Well, do you understand the question, Mr. Meindle?

A. Well—

Trial Examiner Batten: Read the question, again, please.

(The question was re-read.)

A. No.

Q. (By Mr. Clark.) How would it differ?

A. What?

Q. How would it differ?

A. Because Mr. Adelman is a fellow that has worked in plants and understands the conditions and problems confronting the workman. He does not understand the problems and conditions that confront office workers. We would be in the same boat as he would be if we wanted to bargain for the office, we don't get in the office and we don't know what their conditions are.

1860 Q. What plant similar to the Falk plant has Mr. Adelman worked in?

A. I believe he has worked in plants in the east.

Q. Do you know the name of them?

A. I have heard them, but I don't recall the names of any.

Q. Did he tell you that?

A. He has mentioned the fact, yes.

Q. Did he name the plants?

A. He did name the plants at that time.

Q. But you don't recall them?

A. I don't recall them, no.

Q. You don't know what work he did?

A. No, I do not.

Q. But you feel that the reason for having excluded the office people and draftsmen at the Falk plant was because you are not familiar with their problems?

A. That is right.

Q. Wouldn't you feel that if they had representatives on the bargaining committee they could make known their problems and wants and you could deal for them?

A. No.

Q. Why?

A. Because we don't know what their conditions are. They can tell us their conditions, but we don't know because we don't get in the office and see their conditions.

1861 Q. If they had a representative on the bargaining committee who were familiar with their own problems don't you think you could then do a successful job of bargaining for them?

A. No, I don't think so, because I think everybody should be familiar with the other's conditions.

Q. Do you feel that everybody in your organization is familiar with the conditions under which every other member of your organization works?

A. That is right.

Mr. Clark: That is all.

Mr. Rissman: That is all.

Q. (By Trial Examiner Batten.) Mr. Meindle, what do you have in your organization in addition to officers?

A. Steward system.

Q. By "steward system" you mean you have a man in each department?

A. Yes.

Q. Who—

A. In some departments we have probably three or four, probably five, depending upon the number of men.

Q. Do you have such a thing as an executive board?

A. Our executive board shall be the president, vice president and the secretary, that would be the executive board.

Q. Well, do you have any such thing as trustees?

A. No.

1862 Q. Or directors?

A. No.

Q. Well, who elects the officers in your organization?

A. The men themselves.

Q. The men?

A. Yes, sir.

Q. And who elects the stewards?

A. The men.

Trial Examiner Batten: I think that is all.

(Witness excused.)

Mr. Engelhard: Mr. Examiner, during the recess Mr. Rissman and I have agreed to stipulate that the books I hold in my hand is the official document which shows the—which is the final bulletin of proceedings of the Wisconsin Legislature, of the Senate and Assembly, and shows what happened in the session ending July 2nd, 1937, and from this we wish to introduce in evidence, we want to read into the record the important dates pertaining to the enactment of what is now known as Chapter 51 of Laws of the State of Wisconsin for the year 1937, and which created Chapter 111 in the Statutes.

Trial Examiner Batten: Mr. Clark, will it be agreeable to you to have counsel read the dates?

Mr. Clark: That is agreeable to me.

Trial Examiner Batten: Proceed then.

Mr. Engelhard: The bill was originally known as the 1863 No. 6-S, meaning that it was a Senate bill and was introduced in the Senate on January 19th, 1937 by Senator Severson.

Between the 19th day of January, 1937 and the 5th day of March, 1937, the usual committee proceedings took place.

Then on the 5th of March the bill was made a special order, and was read a second time on the 9th of March. On the 9th of March certain proceedings took place regarding amendments and substitute amendments, and then there were proceedings on the 11th of March, on the 12th of March, and the 17th of March, the 19th of March, the 22nd, and many proceedings on the 31st of March with reference to amendments—24 amendments—no, pardon me, 18 amendments.

Then on the 1st of April actions were taken on 6 additional amendments, making a total of 24 amendments.

Then on the 1st of April there were actions taken on a large number of amendments and the actions taken on the amendments cover practically two and one-half pages in the proceedings. According to the record the amendments that were acted on, on the 1st of April, had grown to about 35 in number, and on the 1st of April the bill was ordered engrossed and read a third time. The rules were suspended and the bill was passed by the Senate by a vote of 30 to 3.

Then on the 2nd of April the bill was received from the Senate by the Assembly, and on the 2nd of April it was 1864 made a special order of business on the 8th of April, and on the 8th of April after certain amendments were either accepted or rejected by the Assembly, the bill was finally passed on the 8th of April by a vote of 77 to 19.

"It was then immediately—

Trial Examiner Batten: Mr. Brever wasn't quite as much of a profit this morning as he thought.

Mr. Lamfrom: Not quite as much. I was more nearly accurate.

Mr. Engelhard: Then on the same day after the House had passed the bill it was sent back to the Senate and it was concurred in by the Senate.

Then on the 14th of April the report correctly enrolled at 4:25 p. m. on that day—I mean the report correctly enrolled at 4:25 on Tuesday, April 13th, 1937, and on April the 15th the Governor approved the bill and it was published as Chapter 51 on April 15th, 1937, and here it is.

I now ask that Chapter 51 of the laws of the 1937 be marked as respondent's exhibit, and I offer in evidence RESPONDENT'S EXHIBIT NO. 7.

Trial Examiner Batten: If there is no objection it may be received, and in connection therewith the dates and so forth which have just previously been read into the record.

Mr. Lamfrom: I think Exhibit No. 7 should be described, in addition to being described as Chapter 51 of the laws 1865 of 1937 of the State of Wisconsin as "An Act to create Chapter 111 and section 20.58, and to amend sub-section (1) of Section 14.71 of the statutes, relating to the promotion of equality of bargaining power between employers and employees," and other things in the title.

Mr. Engelhard: I might state—

Trial Examiner Batten: The so-called Severson Act.

Mr. Engelhard: That is right, the act commonly known as the Severson Act.

Mr. Rissman: Or Wisconsin Labor Relations Act.

I have no objection, I don't know what the purpose of it is.

Trial Examiner Batten: It will be received.

(Whereupon, the document above referred to, marked RESPONDENT'S EXHIBIT NO. 7, was received in evidence.)

Mr. Engelhard: I will call Mr. Stichmann.

WILLIAM STICHMANN, a witness called by and on behalf of the respondent, being first duly sworn, was examined, and testified as follows:

Direct Examination.

Q. (By Mr. Engelhard.) Mr. Stichmann, your name is William?

A. William Stichmann.

Q. You are an employee of the Falk Corporation?

A. I am.

1866 Q. How long have you been such employee?

A. Nine years the 1st of August this year.

Q. What is the nature of the work that you are now engaged in or do?

A. I am a welder.

Q. How long have you been a welder?

A. I think with the exception of about seven months I have been a welder all the time; with two years of apprenticeship.

Q. Were you ever a member of the Works Council?

A. I was.

Q. When were you such member?

A. I was a member of that Works Council from the beginning of it until the election in June of last year.

Q. That was June, 1937?

A. 1936.

Q. I mean 1936.

A. Yes.

Q. Were you present at the meeting of the Works Council in the month of April?

A. Of this year?

Q. Yes, in the month of April, 1937.

A. Yes.

Q. What was the date of that meeting?

A. There were three meetings, April 8th, the 12th and 13th.

Q. You say April 8th, the 12th and—

1867 A. The 13th.

Q. —13th?

A. Yes.

Q. You say that meeting of April the 12th was a Works Council meeting?

A. Well, really it wasn't a Works Council meeting, it was ex-Works Council and Council meeting together.

Q. What was the purpose of that meeting?

A. To get acquainted with the Wagner and Severson Acts.

Q. To get acquainted with the Wagner—

A. Yes.

Q. —and Severson Acts?

A. Yes, sir.

1868 Q. When were you asked to go to that meeting?

A. When was I asked?

Q. Yes.

A. I wouldn't remember just when it was.

Q. Was it on the 12th or was it prior to the 12th that you were notified that there was a meeting?

A. No, I am quite sure it was prior.

Q. Was there any discussion at the Works Council meeting on the 8th at which you were present regarding a meeting subsequently to be held between the then members and ex-members of the Works Council?

A. I think permission was asked of Mr. Harold Falk.

Q. For what?

A. If the meeting—if the Council men and ex-Council men could meet.

Q. Where?

A. Underneath the hospital.

Q. Was there any statement in connection with the request for permission as to the purpose of the meeting?

A. No, sir.

Q. What was that?

A. No, sir.

Q. Who asked that permission?

A. I don't remember.

Q. Was it one of the employee representatives or
1869 employer representatives?

A. Employee.

Q. That asked for permission?

A. Employee representative.

Q. Who was the chairman of the employee representatives at that time?

A. That I would not know, I was "ex" at that meeting.

Q. What is that?

A. I wasn't on the board—I wasn't a council man at that meeting.

Q. You were at the meeting of the 8th but you had not

attended any other meeting so that you were not familiar with the organization.

A. No.

Q. You dropped out in June, 1936?

A. July 1st was the last meeting, or July—the meeting held in July was the last meeting I attended, but I lost out in the election in June.

Q. So that between—the last meeting you attended while you were a member was in June, 1936?

A. July.

Q. July 1936?

A. Yes, sir.

Q. Then you had not attended any meeting until the 8th of April, 1937?

870 A. That is right.

Q. Is that correct?

A. That is right.

Q. You did not know what the formation of the Council was during that time as to who was Chairman of the employee representatives?

A. No.

Mr. Rissman: Will you answer for the record, you shake your head.

The Witness: No.

Q. (By Mr. Engelhard.) Always answer so that the reporter can hear what you say, he hasn't time to watch your head.

Now, what discussion, if any, occurred at the meeting of April 8th respecting the formation of any union, independent or otherwise?

A. I don't remember of any.

Q. When you heard that Mr. Falk gave permission for a meeting at the hospital, at that time did you know that you were invited to attend that meeting?

A. No.

Q. When did—strike that, I asked that before.

How did you receive notice of the meeting of the 12th?

A. By one of the Council members named Stanley Adamski.

Q. Was that a notice by word of mouth?

A. Yes, sir.

1871 Q. Where were you at the time he gave you that notice, if you recall?

A. I don't.

Q. When was the meeting of April 12th convened?

A. I don't remember.

Q. Well, when did it start? Maybe that is a simpler question?

A. Well, it was some time after dinner, just what time I would not know.

Q. Who was acting as chairman of that meeting?

A. John Brever.

Q. And do you recall what John Brever did at that meeting, if anything?

A. Yes, I recall him reading a letter; I didn't pay much attention to it.

Q. But did you pay sufficient attention so that you could give us the general subject that he discussed when he read the letter?

A. Yes.

Q. What was that?

A. In regard to the Severson law.

Q. After he had read that letter, what then took place?

A. Well, we discussed the law as far as we knew it and we decided to call in Mr. Harold Falk for any further information he could give us.

1872 Q. After that decision was made, how was Mr. Harold Falk called in, if you know?

A. He was sent for by one of us.

Q. Do you know the individual who actually went to Mr. Falk's office and called for Mr. Harold Falk?

A. If I remember, it was Mr. Kokalj.

Q. How do you spell his name?

A. K-o-k-a-l-j.

Q. K-o-k-a-l-j?

A. I think so, I don't know; he is sitting back there.

Q. Is that Frank?

A. Yes.

Q. Frank Kokalj?

A. Yes.

Q. And after Frank Kokalj had left the meeting, did he return with Mr. Falk, did he return with Mr. Falk, if you recall?

A. I don't know.

Q. Well, at any rate Mr. Falk came.

A. Yes, sir.

Q. Now, after Mr. Falk came to the meeting, what was the conversation that took place between Mr. Falk and any of the men that you heard?

A. Well, there was some discussion on the—I believe on the Wagner Law and the Severson bill.

1873 Q. What led up to the discussion, were there any questions asked?

A. Yes, sir, somebody asked questions.

Q. Will you state the nature of the questions that were asked if you can recall?

A. I can't.

Q. Can you state the nature of Mr. Falk's answers?

A. Yes, his answer was, so much that he wouldn't be sure himself, he could give us his opinion, but he would have to see a lawyer to get a correct interpretation of it himself.

Q. Well, with what respect did the boys ask Mr. Falk any questions pertaining to the Wagner Act?

A. Well, if it would be possible for us to form an independent union.

Q. They asked him that question?

A. I am quite sure.

Q. He stated he couldn't give a definite answer?

A. Yes.

Q. Now, what else did Mr. Falk say at that meeting that you heard?

A. Well, there was a general discussion there for a while, talking here and there and everybody was talking—

Q. Now, wait a minute, William.

Will you describe the physical surroundings of that room in which you were meeting?

1874 A. Well, we had a long table,—in fact I think it was two tables set together, and there were a number of us sitting around, and I don't know the exact number, but it was around 20, it might have been a few more or less, and little groups here and there talked among themselves, discussed this, that, and the other thing, and some of us told stories and laughed while others were thinking more serious, but I do remember of me saying to Mr. Falk that if he could set that raise which he had promised us up a month, that the fellows out in the shop would feel a hell of a lot better about it.

Q. What did Mr. Falk say to that?

A. Mr. Falk said that if I thought the fellows would feel a lot better about it, that he couldn't say, he wasn't so straight that he couldn't bend, that if he thought the fellows would feel a lot better out in the shop, he didn't see no reason

he can't, and he went on to explain why he set it in the first place, at the first of June.

Q. What did he say?

A. He said that the work that was in the shop was all contracted for under the old wage scale and it would take nearly or around that time, up until the first of June to get most of that work out, and that new business coming in now, that he could allow for the present raise in wages.

Q. Was there anything said at that time in connection with that discussion that you had with Mr. Falk about 1875 an independent union?

A. That I had with Mr. Falk?

Q. When you and Mr. Falk had the discussion, was there anything said about an independent union?

A. No, sir.

Q. The statement was made here in court that one of the remarks that Mr. Falk made in connection with that raise of pay was in answer to a question put by someone, who said that it would help to organize the independent union if he granted this raise in pay, did you hear any such statement?

Mr. Rissman: I object to that as a misstatement of the record, if the Examiner please. There was no such testimony given.

Trial Examiner Batten: I have no recollection of anybody saying that; I have no recollection of any men saying that.

Mr. Clark: If the raise was moved forward, it would prevent a lot of men from joining—

Trial Examiner Batten: Yes, it would prevent a lot of men from joining the C. I. O.

I don't remember the question that way, that it would help the Independent Union. I think the question was that it would keep a good many fellows from joining the C. I. O. which of course I presume indirectly would help the Independent Union, although the Independent Union wasn't 1876 mentioned as I recall.

Mr. Engelhard: Maybe I misquoted the testimony, and I stand corrected.

Q. (By Mr. Englehard) Now, with the amendment that you heard from Mr. Batten, and from Mr. Clark, did you hear any reference made that it would prevent the men from joining the C. I. O. if this raise were granted?

A. I did not hear that.

Q. Were you in a position to have heard such a remark if it had been made by anybody to Mr. Falk?

A. I wouldn't say, something could have been said and I wouldn't have heard it, because I was talking and when I got through with my statement to Mr. Falk, we talked among ourselves there.

Q. This conversation you had with Mr. Falk, Mr. Stickman, was that open so that they could hear it, or was it private conversation you had with Mr. Falk?

A. No, I don't think it was private, it was right there at the meeting. Of course there were others talking down at the other end.

Q. Have you any idea how many men were within hearing of your question and Mr. Falk's answer? You said there were about 20 men there.

A. I think about that.

Q. Might there have been as many as 24?

1877 A. I think there could have been, as far as I know.

Q. While Mr. Falk was at that meeting, did he say anything at all about the C. I. O.?

A. Yes.

Q. What did he say?

A. He said that the men could join either the C. I. O., the A. F. of L. or the Independent Union, he wasn't allowed to say anything either way.

Q. Was there anything else said by Mr. Falk regarding unions, whether the C. I. O., the A. F. of L. or the Independent?

A. Not that I know of.

Q. Was there any decision arrived at by the men who were at this meeting of April 12th about forming an independent union, or joining the C. I. O., or joining the A. F. of L.?

A. No, we decided to adjourn and hold a meeting the next day, and Mr. Falk promised to get any further information that he could.

Q. Did you attend the meeting the next day?

A. I did.

Q. And when was that meeting called?

A. Well, it was after dinner too, just what time I don't know.

Q. What occurred at that meeting?

A. I don't know, there was a general discussion on 1878 the two bills pending at that time, or if the Wagner Act was passed, but anyway it was on the two laws.

Q. Well, what was the discussion about?

A. Well, the same as the day before, about forming an independent union.

Q. Who was chairman of that meeting, if you remember?

A. Why, it was John Wolf that day.

Q. How long was that meeting in session?

A. I would not know.

Q. Well, do you know when you left the meeting, about what time it was when you left the meeting, if you left it?

A. I left the meeting and I couldn't say what time it was, but I was supposed to go to work at 5:30 and it give me a little time to go home and come back to the shop by 5:30.

Q. While you were at that meeting, on the 13th, did Mr. Harold Falk come to that meeting?

A. No, sir.

Q. Did anyone else come to that meeting other than members of the Works Council and ex-members of the Works Council?

A. Yes, Mr. Richard Falk was there that day.

Q. How long after the meeting commenced did he appear?

A. I don't know.

Q. Do you know how he happened to come there?

A. Yes, we sent for Mr. Harold Falk and Mr. Harold Falk was not in the shop at that time.

1879 Q. Do you know who was sent to get Mr. Harold Falk?

A. Yes, I think Mr. Kokalj was sent.

Q. Mr. Frank Kokalj?

A. Yes.

Q. When he came back to the meeting was Mr. Richard Falk with him?

A. No, he come a few minutes later.

Q. Mr. Richard Falk came a few minutes later?

A. Yes, sir.

Q. Was there an explanation made to the meeting why Mr. Richard Falk came?

A. Yes, Frank said that Mr. Harold Falk was not available, so he asked Mr. Richard Falk to come.

Q. Now, then, when Richard Falk arrived there, what occurred?

A. Well, they asked him if he had any information for us on the Severson law, and what his answer was, I don't remember.

Q. Do you recall any of the remarks that Richard Falk made at that meeting?

A. I don't know.

Q. Well, it was testified here that he made a remark to the effect that it cost \$5 to incorporate.

Do you recall any such remark made by Richard Falk?

A. I don't know.

Q. It was also testified that he advised the men there to incorporate the Independent Union.

Was there any such remark made by Richard Falk that you heard?

A. Not that I heard.

Mr. Rissman: Keep your voice up, Mr. Stickman, please.

Q. (By Mr. Engelhard) Did you leave before Richard Falk had finished or had he finished before you left?

A. No, we postponed that meeting and we all left together.

Q. This was on the 13th?

A. The 13th.

Q. What was the plan with regard to meeting the next day, if at all?

A. I think the same, for the same reason,—for the same reason we left the day before, to get more information.

Q. About what?

A. The Severson and the Wagner laws.

Q. You wanted to know whether an independent union could be established under either of the acts and be legal?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. Now, then, did you return to any further meeting on the 13th of April?

A. I did not.

Q. Do you know of your own knowledge that a subsequent meeting did take place on that day?

A. I heard it did, yes, sir.

Q. But you did not attend that.

A. No, sir.

Q. Did you attend any meeting, any of these meetings—you were at the meeting on the 12th and later on the 13th, did you attend any meeting on the 14th of April?

A. No, sir.

Q. The meeting, the first meeting of the 13th was the last meeting that you attended.

A. Yes, sir.

Q. When did you next attend any function at which an independent union was discussed?

A. On the 24th.

Q. Of April?

A. Yes, sir.

Q. Where was that meeting?

A. I think it was at the North Side Auditorium, on North avenue.

Q. What occurred at that meeting in substance, just so we know what the meeting was for?

A. Well, they took applications at the door and when the meeting was called, we elected our officers.

Q. That is, a board of directors was elected?

A. A board of directors, yes, sir.

1882 Q. And officers were elected?

A. Yes, sir.

Q. Prior to that time were there by-laws adopted?

A. Yes, sir.

Q. The by-laws were adopted first?

A. Yes.

Q. And then the board of directors were elected and then the officers were elected?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. You did not attend any meeting then on Sunday, the 18th?

A. No, sir.

Q. Were you out of the city that day?

A. I was not.

Q. How did it happen you were not at that meeting on the 18th?

A. Well, up until that time I was a pretty strong C. I. O. man, sir.

Q. Had you signed an application for the C. I. O.?

A. No, I had not.

Q. But you said you were strong for the C. I. O.?

A. I was.

Q. When did you change your mind?

A. I did.

1883 Q. —if you did.

A. I signed an application to the Independent Union on the 21st.

Q. Then some time on the 21st or prior thereto you decided which organization you wanted to belong to.

A. Yes, sir.

Q. Mr. Stickman, did any officer of the corporation in any manner influence you as to which organization you should join?

A. They did not.

Q. The joining of the Independent Union was your free choice?

A. It was.

Q. Did you prior to the time you made up your mind discuss the relative merits of the Independent Union and the C. I. O. with other workers?

A. Oh, yes.

Q. You discussed with some members of the C. I. O.?

A. Yes, sir.

Q. And you discussed it with members of the Independent Union?

A. Yes, sir.

Q. And you came to your conclusion independently?

A. I did.

Q. At the meeting of the 12th was there anything said by Mr. Falk that indicated to you what his preference was 1884 as to which organization the men should belong to?

A. No, sir.

Q. Was there anything said on the 8th of April by Mr. Falk as to which union he would prefer the employees of the Falk plant to belong to?

A. I don't remember anything now.

Q. Of course you were not present at any other meeting at which Mr. Falk was present, if he was?

A. No, sir.

Q. Your statement is that the only time you heard him say anything to the boys at any meeting was on the 12th.

A. Yes, sir.

Q. Of April.

A. Yes, sir.

Q. Is that correct?

A. Will you repeat that question?

Mr. Engelhard: Repeat the question, Mr. Reporter.

(The record was read.)

The Witness: You say an Independent Union?

Q. (By Mr. Engelhard.) Yes.

A. Yes.

Q. Was there any discussion at the April 8th meeting about an independent union—that was the regular meeting

of the Works Council—at which you were an invited guest.

A. I don't remember of anything.

1885 Mr. Engelhard: I think that is all.

Cross-Examination.

Q. (By Mr. Rissman.) Mr. Stickman, are you a member of the Independent Union now?

A. Yes, sir.

Q. Are you an officer?

A. I am.

Q. What office do you hold?

A. I am just on the board of directors.

Q. How did you happen to be at the meeting of the Works Council of April 8th?

A. I was asked to come in.

Q. By whom?

A. Stanley Adamski.

Q. For what purpose?

A. He didn't state.

Q. What did you do there?

A. What did I do there?

Q. That is right.

A. I just sit and listened in.

Q. Did you take any part in the discussion?

A. No, sir.

Q. All right, at the meeting of April 8th or the meeting of April 12th you were at both of those meetings, you heard Mr. Falk speak.

1886 A. Yes, sir.

Q. You have related to us everything you heard him say.

A. I would not say I have.

Q. Well, do you recall anything now that you did not give us when Mr. Engelhard was questioning you?

A. I think he—on the meeting of April 8th?

Q. Yes.

A. He discussed a statement that he had in writing in regard to the raise that the Works Council had asked for.

Q. Do you recall anything else that Mr. Falk discussed at either one of those meetings, that you haven't already related to us?

A. I don't offhand now.

Q. But there may have been discussions or statements

made by him that you did not hear, or you do not recall at the present time?

A. I suppose there may have.

Q. Do you know now which union Mr. Harold Falk preferred, the Independent Union or the C. I. O.?

A. Well, I read his testimony in the paper.

Q. Did you know it before you read his testimony in the paper?

A. I did not know it, no.

Q. Did you have any opinion as to which union he preferred before you read his testimony in the newspaper?
1887 Mr. Engelhard: Are you implying that he indicated in this courtroom which union he prefers?

Mr. Rissman: The witness implied that.

Trial Examiner Batten: What was the last question?

(The question was read.)

Trial Examiner Batten: You may answer that, yes or no.

The Witness: Well, I think I formed my own opinion, yes, sir.

Q. (By Mr. Rissman.) What is that opinion?

A. I imagine he would prefer the Independent.

Mr. Rissman: That is all.

Redirect Examination.

Q. (By Mr. Engelhard.) What would be the basis for your imagination, Mr. Stickman?

A. Naturally if I put myself in his place I would like to deal with my employees rather than have an outsider deal with them for me.

Q. With reference to this meeting of April 8th, Mr. Stickman, there was a discussion about a bonus, wasn't there, do you recall that?

A. I don't think I do.

Q. You don't recall that?

A. No.

Q. Do you remember whether Mr. Falk discussed whether there would be a bonus for the year 1937?

1888 A. Yes, I remember hearing it some place, but I wouldn't say it was at the meeting or not.

Mr. Engelhard: That is all.

Mr. Rissman: That is all.

Trial Examiner Batten: Mr. Clark?

Mr. Clark: I don't think I have any questions.

Q. (By Trial Examiner Batten.) Mr. Stickman, you said you are a director of the Independent Union?

A. Yes, sir.

Q. How are the directors elected in that organization?

A. They are elected by vote.

Q. Who elects the officers?

A. The officers are elected by the board of directors.

Trial Examiner Batten: That is all.

(Witness excused.)

Trial Examiner Batten: Don't put this in the record.

(Discussion outside the record.)

Mr. Engelhard: Mr. Examiner, shall we continue to five thirty or five?

Trial Examiner Batten: Just continue to five.

Mr. Rissman: Off the record please.

(Discussion outside the record.)

Trial Examiner Batten: All right, you may proceed, Mr. Engelhard.

Mr. Engelhard: I will call Mr. Kokalj.

1889 FRANK KOKALJ, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Engelhard.) Your first name is Frank, Mr. Kokalj?

A. Yes, sir.

Q. How do you spell your last name?

A. K-o-k-a-l-j.

Q. Will you pronounce it?

A. Kokal,—the "j" is silent.

Q. Mr. Kokalj, are you employed by the Falk Corporation?

A. Yes, sir.

Q. How long have you been employed by it?

A. Six and one half years.

Q. What is your work with the firm?

A. Crane maintenance or maintenance department.

Q. Crane maintenance?

A. Yes, sir.

Q. Were you present at the meeting of the Works Council on the 8th of April?

A. Yes, sir.

Q. How did you happen to be at the meeting of the 8th of April?

A. I was a representative of the Works Council, I was a member of the Works Council.

390 Q. You were a member of the—

A. Of the Works Council, yes, sir.

Q. Of the Works Council.

A. Yes, sir.

Trial Examiner Batten: Mr. Engelhard, pardon me for interrupting.

Mr. Engelhard: Yes, sir.

Trial Examiner Batten: Did Mr. Stickman leave?

Mr. Engelhard: No.

Trial Examiner Batten: I wonder if you would mind asking him, Mr. Englehard, if he was paid for the time he attended those meetings?

Mr. Engelhard: Yes, I will ask him that.

Please state, Mr. Stickman, whether you received payment for the time you attended meetings on the 8th, on the 12th and on the 13th?

Mr. Stickman: I don't remember if I did or not; I was working nights at the time.

Mr. Engelhard: Do you remember whether or not after you received your check for that week, you received any deductions?

Mr. Rissman: He did not say he did.

Mr. Stickman: Yes, I was deducted some there at one time, but honestly I wouldn't be able to say what it was for though.

891 Mr. Engelhard: Well, did you—do you know just what you did when you went to the meeting? Did you punch any cards before you went to the meeting of the 8th, mean on the 12th?

Trial Examiner Batten: Mr. Engelhard, I wonder if you would mind, will there be someone here tomorrow who might testify as to whether Mr. Stickman was paid for those meetings?

Mr. Engelhard: I think the record would show that. We will have testimony introduced, Mr. Examiner, showing how much each man was paid and how much each man was subsequently deducted.

Trial Examiner Batten: Then we don't have to bother—

Mr. Rissman: Is that the whole series of meetings, the 12th, the 13th, 14th,—whatever it was?

Mr. Engelhard: Well, of course, a man was not paid if he did not attend a particular meeting, he could only be paid for the time he spent.

Trial Examiner Batten: Well, of course one thing I was particularly interested in was Mr. Stickman, was whether or not he was paid for the meeting of the 8th.

Mr. Engelhard: Were you paid for the meeting of the 8th?

Mr. Stickman: I don't know.

Mr. Engelhard: Well, do you know whether you were paid for the meeting of the 12th?

1892 Mr. Stickman: I don't remember, I was just trying to get it straight in my own mind, I can't place it now.

You see, I was working at night at the time, and I went home in time for work that night.

Trial Examiner Batten: Well, the records will probably show, Mr. Engelhard.

Mr. Engelhard: Yes, I think they will show what the situation was.

Now, what question have I asked Mr. Kokalj?

(The question was read.)

Q. (By Mr. Engelhard.) You were at the meeting of the 8th because you were a regular member of the Works Council?

A. Yes, sir.

Q. That is, you were an employee representative?

A. Yes, sir.

Q. What department did you represent on the Works Council?

A. The maintenance department, the electricians, stock room, power house, yard gang and watchmen.

Q. I assume that all of those—

A. Pardon me.

Q. (Continuing.) —departments nominated you and some others in the primary?

A. Yes, sir.

Q. And then you and one other ran off the election, is that right?

1893 A. Yes, sir.

Q. Then you were elected?

A. Yes, sir.

Q. How long were you on the Works Council?

A. From the first of January until the last meeting I attended, was April 8th.

Q. That is, you were on the Works Council during the year 1937?

A. Yes, sir.

Q. Now, Mr. Kokalj, when you were at the meeting on the 8th of April, was Mr. Falk there at any time?

A. Yes, he was there.

Q. Do you recall any discussion that took place between the Council and Mr. Falk?

A. Yes, sir.

Q. What was that discussion?

A. A month previous to April 8th we brought before management to have a vacation with pay and a bonus, and during that meeting he gives us a reply on that.

Q. What did he say in substance about a raise in pay and bonus and vacation?

A. There was no raise in pay.

Q. I said, what did he say about a raise in pay? And, about a vacation and a bonus?

A. Well, first of all, the vacation was out I think and 1894 instead of that he gives us a raise that date, starting June 1st, and the bonus matter, that would be taken up later.

Q. Now, was there any discussion had at that meeting of April 8th regarding the Severson Act?

A. No, sir.

Q. Or the Wagner Relations Act?

A. No, sir.

Q. Was there any discussion had there regarding labor acts of any kind?

A. No, sir.

Q. Did you—were you in a position at that meeting—I mean were you so located at that meeting to have overheard whatever was said that meeting?

A. I don't understand the question.

Mr. Engelhard: Read the question please.

(The question was read.)

The Witness: Yes, sir.

Q. (By Trial Examiner Batten.) You mean by everybody present?

A. Yes, sir.

Q. (By Mr. Engelhard.) By everybody present?

A. Yes, sir.

Q. Was there any discussion at that meeting with regard to an independent union?

A. No, sir.

Q. Was there any discussion at that meeting about 1895 further meetings of the Works Council?

A. There was one about, somebody asked—I don't know exactly who did, but asked Mr. Falk if we could get the ex-representatives together and the present representatives, to hold a meeting.

Q. Was there any mention made as to the purpose of that meeting?

A. No, sir.

Q. Did you know at that time what the purpose of the meeting would be if held?

A. I think I had a pretty good idea, yes.

Q. All right, from whom did you get that idea?

A. I think Mr. Richard Falk explained the small Wagner bill for us, that it would eliminate the company unions.

Q. When did he explain that to you?

A. That was previous to the April 8th meeting.

Q. Where was that meeting had at which Mr. Richard Falk explained to you what you call the small Wagner Act,—you mean the Severson Act?

A. Yes, sir.

Q. Where was that discussion had?

A. In the cafeteria off the main office.

Q. Who were the people present at that time?

A. The present Works Council, Mr. Dick Falk, I think Mr. Green if I am not mistaken.

1896 Q. What was the occasion of that meeting?

A. To thrash out some of the ideas of the Severson bill or small Wagner bill.

Q. You mean determine what the effect of that bill would be if it were enacted in law?

A. Yes, sir.

Q. Was there any decision made at that particular meeting as to whether or not there would be further meetings to determine the effect of that law?

A. No, sir.

Q. Now, when you say that you had an idea as to what the meeting would be for, if permitted to be held, did you get any idea from the discussions with other members of the Works Council as to what it would be for?

A. Naturally when you come back to the shop from a meeting they want to know what you were there for.

Q. Yes. Go ahead.

A. And we all knew about this act being up in Madison, so

you could only tell them what you heard, that we tried to find out this act that was up there, that was all.

Q: Now, how did you happen to go to this meeting on the 12th?

A. Well, I was notified there was going to be a meeting.

Q. Who notified you?

A. I don't know the exact person, but I was notified, and then I told two or three fellows to come down.

1897 Q. Were you notified by written notice or by telephone? Or, by a person speaking to you?

A. I think I got a note from someone, I am not sure who it was; then I passed that note on to two other fellows.

Q. So in due course you arrived at the meeting on the 12th?

A. Yes, sir.

Q. Do you know when that meeting started?

A. Well, it was some time after dinner, I don't know the exact hour.

Q. Who was chairman of that meeting?

A. April 12th?

Q. On April 12th.

A. The chairman of the Works Council at that time was Mr. Brever.

Q. You mean he was chairman of the entire Works Council?

A. Well, the present Works Council, yes.

Q. Was he chairman of the whole Works Council or chairman of the employee representatives?

Q. Chairman of the employee representatives.

Q. What happened after the meeting was called to order?

A. Well, I think he read a letter, or I know he did.

Q. What was the substance of that letter that he read?

A. From something that we were facing, some act that was up at Madison at the present time.

Q. Do you recall anything else there was in that letter that he read?

1898 A. No, I don't.

Q. What discussion followed the reading of that letter?

A. Well, there was quite a bit of discussion.

Q. About what?

A. About this act, or what they would have to do; so I was asked to go out and call up Mr. Falk.

Q. How far was this meeting place where the boys met from Mr. Falk's office?

A. You mean in the matter of feet?

Q. Yes.

A. About 200 feet.

Q. Or blocks,—I don't know how far it is. Can you give us an idea of how far it is?

A. About 150 to 200 feet.

Q. Did you go over to the office?

A. No, I called over the phone.

Q. Were you able to get in touch with Mr. Falk?

A. Yes, sir.

Q. Did he come over?

A. He come over, yes.

Q. Now, will you tell us what occurred when you got there?

A. Well, they wanted to know about this Severson Act, or small Wagner Act, wanted him to give some details on it.

Q. What did they want to know about that Act?

1899 A. Well, I don't know what the real discussion was. I suppose it was something pertaining—

Mr. Rissman: I object to what he supposes.

Q. (By Mr. Engelhard.) Just a minute, if you don't know, Mr. Kokalj, don't testify to something you don't know.

A. I don't know.

Q. We don't want suppositions or mere imaginations.

A. All right.

Q. Give us the facts just as you know them.

Mr. Engelhard: Give him a little chance, Mr. Rissman. These fellows here haven't got the memories that we have. By engaging in intellectual debate and all of that, we sharpen our wits, but these gentlemen don't.

Now, Mr. Kokalj, do you remember anything Mr. Falk said at that meeting of the 12th?

A. Well, there was a remark made by him he hadn't got it down pat or something like that, that he would find out for us.

Q. (By Mr. Engelhard.) About what would he find out for you?

A. That I don't know.

Q. Were you at this meeting—strike that.

When you were at this meeting of the 12th was this a regular formal meeting at which everybody kept quiet while somebody else talked?

1900 A. No, it wasn't, at one end of the table they were telling jokes, and this end something else.

Q. In other words, it was a sort of general discussion?

A. Yes, sir.

Q. Did I ask you before who was chairman of that meeting?

A. Yes, you did.

Q. Now, was there anything said about any union at that meeting by Mr. Falk that you heard?

A. No, sir.

Q. Was there anything said about an independent—forming an independent union by Mr. Falk?

A. No, sir.

Q. Were there any questions put to Mr. Falk regarding an independent union by any men that you recall?

A. No, sir.

Q. How long did that meeting last?

A. About an hour or an hour and a half.

Q. Were you there when the meeting adjourned?

A. Yes, sir.

Q. What action was taken by the meeting—what action was taken by the men at that meeting on any subject, if they did take any action?

A. Well, they all—the meeting adjourned and we were supposed to come back the next day and Mr. Harold Falk would have some more information for us.

1901 Q. Was that action taken at Mr. Harold Falk's request, or was that action taken after he had left?

A. That was after he had left.

Q. The boys decided to have a meeting the following day.

A. Yes, sir.

Q. Is that correct?

A. Yes, sir?

Q. Now, do you recall any conversation had between Mr. Falk and Mr. Stickman at that meeting?

A. Well, there was some conversation with Mr. Falk but I don't know who he was conversing with.

Q. Well, did you hear the remark that Mr. Falk made when he had this conversation with some other person whom you do not know?

A. Yes, something about a raise, so that we would get it one month in advance.

Q. Was that the remark that Mr. Falk made that you heard?

A. Well, that he would grant the raise one month sooner.

Q. Did he give any reason for granting it one month sooner, that you heard?

A. There would be less trouble in the shop, if that was

what these fellows wanted, that was what he would grant them.

Q. Well, do you recall what the nature of the question was that was put to Mr. Falk which caused him to give the answer that you say he gave?

1902 A. No, I don't.

Q. You don't know who put the question to him?

A. No, sir.

Q. What end of the room were you in?

A. I was sitting back of the post.

Q. Were you joking with somebody while the meeting was going on?

A. Well, I suppose I was not attending to business.

Q. Do you know how you happened to be selected to go out and ask Mr. Falk to come?

A. Yes, at that time I was sitting at the foot of the table.

Q. (By Trial Examiner Batten.) You were close to the door.

A. Yes, I was.

Q. (By Mr. Engelhard.) And the chairman asked you to go.

A. Yes, sir.

Q. Now you said on the 12th the meeting adjourned without any action taken except you were to meet the next day, the 13th?

A. Yes, sir.

Q. Did you attend the meeting on the 13th?

A. Yes, sir.

Q. By the way, you attended—did you attend two meetings on the 13th or just one?

A. Yes, I attended two, but I come in late on the second one.

1903 Q. That was the second one that same day?

A. Yes, sir.

Trial Examiner Batten: Mr. Engelhard, I believe this would be a pretty good place to stop, before you get into this second meeting.

Mr. Engelhard: All right. You come back tomorrow.

Trial Examiner Batten: We would not be able to complete this witness anyway.

Mr. Engelhard: No.

Trial Examiner Batten: So we will adjourn until 9:00 o'clock tomorrow morning.

Mr. Engelhard: Very well.

(Whereupon at 5 o'clock P. M. August 23rd, 1937, the hearing was adjourned to 9:00 o'clock A. M. August 24th, 1937.)

BEFORE THE NATIONAL LABOR RELATIONS BOARD.

(Caption—XII-R-85 and XII-C-57)

Room 409, Milwaukee County Courthouse,
Milwaukee, Wisconsin,
Tuesday, August 24th, 1937.

The hearing was resumed, pursuant to adjournment, at
10 o'clock a. m.

Present:

James C. Batten, Trial Examiner.

Appearances:

Robert R. Rissman, and

S. G. Lippman, Attorneys on behalf of the National
Labor Relations Board.

A. G. Goldberg, 511 Warner Building, Milwaukee, Wis-
consin, appearing for International Union of Oper-
ating Engineers, Local No. 311.

Giles F. Clark, of Alexander, Burke & Clark, 110 East
Wisconsin Street, Milwaukee, Wisconsin, appearing
for Independent Union of Falk Employees.

Lamfrom, Tighe, Engelhard & Peck, by Leon B. Lam-
from, and A. J. Engelhard, appearing for The Falk
Corporation..

PROCEEDINGS.

Trial Examiner Batten: Will the reporter please show in
record that there is no attorney present except the attor-
neys for the respondent, at nine o'clock.

(A short recess was taken.)

Mr. Rissman: Is Mr. Clark here this morning?

Trial Examiner Batten: Well, he advised us that we could
proceed without him. Do you think we had better proceed
at this stage of the proceedings without Mr. Clark, Mr.
Wilson?

Mr. Wilson: Well, I called the office at the start of the
hearing, and he said it would be all right.

At this stage of the game should I call him again?

Trial Examiner Batten: What is your opinion, do you
think we had better wait?

Mr. Wilson: I think we should wait.

Trial Examiner Batten: Will you please go and call him and see, please.

Mr. Lamfrom: May we have a five minute recess while we are waiting?

Trial Examiner Batten: Whatever is necessary.

Mr. Engelhard: He may probably be—

Trial Examiner Batten: This is not in the record.

(Discussion off the record.)

(A short recess was taken.)

Trial Examiner Batten: I believe we are ready to 1909 proceed, gentlemen.

Mr. Clark, I guess at this stage of the proceedings, you don't want us to proceed without you?

Mr. Clark: No, I would rather be here; I will be here.

Mr. Engelhard: Mr. Kokalj, will you take the stand, please.

FRANK KOKALJ, resumed the stand as a witness by and on behalf of the respondent, being previously duly sworn, testified further as follows:

Direct Examination (Continued.)

Mr. Engelhard: Will the reporter read the last question and answer.

(The record was read.)

Q. (By Mr. Engelhard.) When you say he came in late to the second one, you mean the second meeting of the 13th?

A. Yes, sir.

Q. What was the reason?

A. Well, I had a break-down job on a crane and I wanted to get that going before coming, get it through, it was pretty serious.

Q. During the intermission between the first meeting and part of the second meeting you were working at your job, were you?

A. Yes, sir.

1910 Q. Now, Mr. Kokalj, what occurred in the first meeting that you remember, of the 13th?

A. Well, we all had an understanding that Mr. Falk would come back with more information for us, and I was sent out to get Mr. Falk, but he wasn't in at the time, he was downtown or some place, and I come back and told them, they said

—I told them that Dick Falk had just come into the garage, and I asked if it was all right for Dick to come down and they said, "Yes", so I went and got Dick.

Q. By "Dick" do you mean Richard Falk?

A. Yes, sir.

Q. That is a son of Mr. Harold Falk?

A. Yes, sir.

Q. After Mr. Richard Falk arrived at the meeting, what occurred?

A. Well, he couldn't explain much, so he was there a short time and then Mr. Connell come in.

Q. Well, suppose you tell us if you can what conversation took place between Richard Falk and the men at the meeting?

A. No, I couldn't repeat that, I don't know what it was.

Q. Do you know whether any of the men asked Mr. Falk any questions?

A. There were questions asked, but I don't remember what they were.

Q. It was testified here by one witness that Richard Falk mentioned about the cost of incorporating. Do you recall him making any such statement that it would cost five dollars to incorporate?

A. No, sir.

Q. Pardon?

A. No, sir.

Q. If he had made such a statement would you have heard it?

A. Yes, sir.

Q. Were you in a position to hear it?

A. Yes, sir.

Q. And you heard no such statement?

A. No, sir.

Q. I believe it was also testified that Richard Falk advised that an independent union be incorporated.

Do you recall any such statement by Richard Falk?

A. No, sir.

Q. You do not?

A. No, sir.

Q. Were you in a position to have heard such a statement, if it had been made?

A. Yes, sir.

Q. Do you know whether or not there was any discussion at that meeting as to what the rights of employees were under the Severson Act?

A. I don't remember.

1912 Q. Or under the Wagner Act?

A. No, sir.

Q. Now, you stated that Mr. Connell came in.

A. Yes, sir.

Q. Do you know how he happened to get there?

A. Well, I guess he come down of his own accord.

Mr. Rissman: I move that be stricken.

Trial Examiner Batten: I believe—

Q. (By Mr. Engelhard.) I am just asking you whether you know how he came.

A. No, I don't.

Trial Examiner Batten: Well, I think he wanted to know if he knew how he came.

Mr. Engelhard: He said he came down of his own accord.

Mr. Lamfrom: He said he guessed he came down of his own accord.

Mr. Engelhard: We don't want to put in any guess, your Honor, whether this witness or some other witness.

Trial Examiner Batten: Well, it may stand for whatever it is worth.

Q. (By Mr. Engelhard.) What did Mr. Connell say while he was at the meeting, if you recall?

A. I don't recall what he said.

Q. Was he there for any length of time?

A. He was there only a short time.

1913 Q. What do you mean by that, a few minutes, half an hour, or a quarter of an hour, fifteen minutes?

A. Well, ten minutes at the most.

Q. Now, what was done at that meeting, that first meeting of the 13th?

A. Well, we all come down there with the understanding that Mr. Falk would come back with some more information.

Q. Information about what?

A. About the Severson Act or small Wagner bill.

Q. And what was done at the meeting, at that first meeting by the men? Did they arrive at any decision about anything?

A. No, they didn't.

Q. Then what was done?

A. Well, after Mr. Connell give answer for a few questions on whatever they did ask him, we adjourned.

Q. With any understanding?

A. No, sir.

Q. Then you said you went back to your job?

A. Yes, I went to the department I worked in there, there was a break-down job that I had to go on right away.

Q. Now, during the time you were engaged at your work did you have any opportunity to talk to any person about this matter that the meetings were about?

A. Not particularly on April 13th.

Q. Did you—how did you happen to go back to the 914 second meeting?

A. Well, I was coming back for some tools when I met Mr. Falk right at the electrical department.

Q. Did you meet him alone?

A. No, there was—

Q. Were there others there?

A. There were three or four of us there.

Q. Which Mr. Falk was that?

A. Mr. Harold Falk.

Q. Did you have a conversation with Mr. Falk at that time?

A. There was a short conversation, yes.

Q. What was that conversation?

A. I think it was something about—it was all right to go ahead with the independent union under the particular acts in Madison.

Q. Did Mr. Falk say anything else?

A. No, sir, not that I remember.

Q. Did he say anything about that you boys—you should go back to a meeting?

A. No, sir.

Q. Now then, did you go to the meeting after that?

A. Yes, I come in after that.

Q. Well, how did you happen to go over to the second meeting?

A. Well, I think it was Mr. Greget that said we should 915 all get together and go back to the meeting.

Q. Then you went back there?

A. Yes, but first I had to finish this job.

Q. Now then, when you arrived at the second meeting of the 13th, what occurred after you arrived?

A. Well, I think there was some discussion about a lawyer, and after some discussion I think a committee was appointed to go see Mr. Falk.

Q. Was this committee appointed before or after the discussion about a lawyer arose?

A. I think it was after.

Q. Were any names of lawyers mentioned?

A. Yes.

Q. At that meeting?

A. There were two or three names but I don't recall the names.

Q. After the committee was appointed did the men remain in session, did they remain at the meeting?

A. Yes.

Q. You remained there, too?

A. Yes, I remained.

Q. And how long was the committee gone before it returned?

A. About half an hour.

Q. What was the report of the committee when it returned?

A. Well, that they—I don't know if I could repeat 1916 that, I am not sure.

Q. Well, give us the substance of it, what did the committee report?

A. Well, Mr. Falk made,—or the committee asked Mr. Falk to make a date with Mr. Clark for the next morning.

Q. Mr. Clark?

A. Or Mr. Burke, I think it was.

Q. Now, do you know which?

A. No, I don't exactly.

Q. For what time the next morning?

A. I think ten o'clock.

Q. After that report was made what occurred?

A. Well, we made up a collection of one dollar a member.

Q. Do you know how many men contributed?

A. What?

Q. Do you know how many men contributed to that collection?

A. About 17 or 18, I think it was.

Q. All those men who were at that meeting at that time?

A. Yes, sir.

Q. The men that were at that second meeting, you say each gave a dollar?

A. Yes, sir.

Q. What was the purpose of that collection?

A. Well, so when they did go to the attorney's office the next day they would not go there without any money, 1917 in case he wanted some money to incorporate, or something like that.

Q. Had there been any decision made at the meeting as

o what type of organization would be organized, whether an association or a corporation?

A. That I don't remember.

Q. Now, did you attend any other meeting at the hospital, underneath the hospital?

Well, I will ask you this: Did you attend a meeting the next day, on the 14th, at which a report was made—this is all the evidence—about what occurred at Mr. Burke's office?

A. Yes, I think there was a meeting the next day.

Q. (By Trial Examiner Batten.) Did you attend a meeting, that is the question?

A. Yes, sir, I was there.

Q. (By Mr. Engelhardt.) And what was the conversation at that meeting, if you recall?

A. Well, as far as I can remember it was something about the attorney's fees, that if this independent union would go through, that he would send them a bill, and if it would drop he wouldn't accept anything then.

Q. That was the report of that committee?

A. Yes, sir.

Q. At that meeting?

A. Yes, sir.

Q. You have testified before, or I believe it was yesterday, that you attended a meeting of April 8th?

A. Yes, sir.

Q. Mr. Neal, when he testified here, said that Mr. Falk in connection with the discussion about a raise and bonus and vacation, when he stated that he would give the matter consideration, that a raise would go through as of June 1st, Mr. Neal stated he would give the raise and vacation with pay, provided there was no third party intervening.

Did you hear any conversation or any statement made by Mr. Falk along that line?

A. Yes, sir.

Q. Will you give us the statement that Mr. Falk made?

A. Well, he granted us the raise instead of a vacation with pay, starting June 1st, provided no third party intervened, and he said if a third party intervened he would start out fresh.

Q. With whom?

A. With the third party.

Q. Did he make mention of any particular third party?

A. No, sir.

Q. At that time?

A. No, sir.

Q. Do you recall any conversation had between the men in this meeting of the 8th and Mr. Falk regarding the Cutler Hammond Manufacturing Company and described—this 1919 is what he said:

“And he talked to the officials down there, and they had the C. I. O. and the American Federation of Labor both in there, and it seems as though they were having trouble with it; he named a certain amount, . . . he said they were having trouble, and the Cutler-Hammer were going to let it run along the way it was as long as they could.

“He said if they couldn’t do anything about it, they were going to dump it over in the government’s lap.”

Did you hear Mr. Falk make any such statement at the meeting of the 8th?

A. No, sir.

Q. Were you in a position to have heard such a statement if it had been made?

A. Yes, sir.

Q. During the time Mr. Falk spoke at the meeting of the 8th was there any commotion?

A. No, sir.

Q. At the meeting of the 8th did you hear Mr. Adamsky ask Mr. Falk what he aimed to do?

A. No, sir.

Q. Did this occur at the meeting:

“Mr. Adamsky—”

This is Mr. Neal testifying.

1920 “Mr. Adamsky asked him what he aimed for us to do?”
Mr. Falk said:

“He aimed for us to start the independent union something to take the place of the Works Council.”

Mr. Falk said, “He didn’t believe he had anything to say about it, but he would answer the question, if that was when he figured—what he figured on doing.”

Did Mr. Falk make any such statement at the meeting of the 8th?

A. No, sir.

Q. About any independent union?

A. No, sir.

Q. And further Mr. Neal testified:

“Mr. Falk said he would get the information for us, how to start this independent union, and would let us know later about it.”

Did he make any such statement at that meeting?

A. On April 8th?

A. On April 8th.

A. No, sir.

Q. Do you recall anyone asking Mr. Falk at that meeting whether or not the members of the Council and ex-members of the Council could meet in the hospital?

A. Yes.

Q. Was there anything said at that meeting as to why they wanted—why the men wanted that permission?

A. No, sir.

Q. Did you hear Mr. Harold Falk say anything along this line, Mr. Neal testifying:

Mr. Harold Falk said that we should meet, that is, the Works Council and former Works Council men could meet and make arrangements for organizing this independent union on company property, but after it was organized we would be able to keep off the property."

A. No, sir.

Q. Did Mr. Falk make any statement about meeting on company property or off the property?

A. No, sir.

Q. At any time, at any of these meetings?

A. No, sir.

Q. Either on the 8th or at any other meeting he attended?

A. No, sir.

Q. Now, at the meeting of the 12th did you hear Mr. John [redacted] ask any question of Mr. Falk?

A. No, sir.

Q. Did you hear Mr. William Stichmann ask Mr. Falk any questions?

A. No, sir.

Q. Did you hear anyone ask Mr. Falk a question about advancing the raise from June 1st to May 1st?

A. Yes, but I don't know who made—or who asked the question.

Q. Well, did the person who asked that question

Examiner Batten: Well now, Mr. Engelhard, why didn't you ask him—he says he remembers—why don't you ask him what was said?

Mr. Engelhard: What was said?

Examiner Batten: And give the witness an opportunity to testify.

Q. (By Mr. Engelhard.) What was said?

A. Something about bringing that raise from June 1st to May 1st.

Q. Yes.

A. And Mr. Falk said that if it would lessen the trouble in the shop he would grant that.

Q. Was there anything said by the person who talked about advancing the raise and Mr. Falk about any union?

A. No, sir.

Q. Did you hear this statement made: "That if you would put the raise—put the raise that he had promised for June 1st ahead a month, that it would keep a lot of men from joining the C. I. O. or an outside organization"?

A. No, sir.

Q. You heard no such conversation?

A. No, sir.

Q. Now, at the meeting on the 12th you said that Mr. 1923 Falk was present, did you hear him say that he would bring you information as to how to start this independent union?

A. No, sir.

Mr. Engelhard: I might state that I asked this question in connection with Mr. Neal's testimony, all of these questions are being asked with respect to Mr. Neal's testimony.

Trial Examiner Batten: Well, my only interest, Mr. Engelhard, for interrupting a moment ago was that on direct examination the witness couldn't recollect anything that happened at these meetings to speak of, and he apparently now recalls quite definitely about a number of these things. That is the only reason.

Q. (By Mr. Engelhard.) Well, yesterday the testimony covered the 12th; we didn't go into the 12th, we didn't go into the 12th today.

Trial Examiner Batten: I mean my only reason for interrupting, as long as the witness indicated he didn't hear this conversation, he should be permitted to indicate what he heard.

Mr. Engelhard: He so testified yesterday when I examined him about the 12th, he did say he heard the conversation but he couldn't identify the man who entered into the conversation with Mr. Falk.

Q. (By Mr. Engelhard.) Mr. Kokalj, Mr. Neal testified:

“Richard Falk stated that he would have to incorporate, that it would cost \$5.00 to incorporate, and it would take three men to sign the papers.”

Now, at the meeting on the 13th did you hear Richard Falk make any such statement as that?

A. No, sir.

Q. Mr. Neal testified that Mr. Falk, Mr. Harold Falk, attended a meeting on the 13th.

What have you to say as to that?

A. The second meeting?

Q. Either the first or second meeting.

A. Well, the second meeting I come in late, and when I come in Mr. Falk was not at the meeting.

Q. Was he at the first meeting that day?

A. No, sir.

Trial Examiner Batten: Who was that Mr. Engelhard, testifying?

Mr. Engelhard: Mr. Neal.

Trial Examiner Batten: Do you have his question and answer there

Mr. Engelhard: Yes, I have the question and answer.

Trial Examiner Batten: What was his answer? Will you read it to me, please? I recall it a little differently.

Mr. Engelhard: (Reading):

“Q. Were there any other meetings held by this same group who met on April 12th, after April 12th?”

925 “A. Yes.

“Q. Were you present?”

“A. Yes.

“Q. When was the next meeting?”

“A. April 13th.

“Q. Where was that held?”

“A. Underneath the hospital.

“Q. During working hours?”

“A. Yes.

“Q. What discussion took place there?”

“A. Well, we went down underneath the hospital and we waited for Mr. Falk. He had promised to bring us information as to how to start this independent union.

“Q. Mr. Harold Falk?”

“A. Mr. Harold Falk.

“And someone called for him at the office, and he wasn't here, and Mr. Richard Falk came down in his place.

“Q. Did he say anything? . . . What occurred at that meeting of April 13th?”

"A. Well, the meeting was adjourned, and some of the night men went home. I went out in the foundry and talked to Stanley Adamsky."

Then he talked about a conversation he had with Stanley Adamsky and he goes on and says:

"Practically all the fellows that had been present at 1926 the first meeting; one or two of the night men had went on home.

"Q. What took place at that meeting?"

"A. Well, Mr. Falk explained what he had found out.

"Q. Mr. Harold Falk?"

"A. Mr. Harold Falk.

"Q. Just tell us what he said if you can?"

"A. Well, he said we would have to incorporate, and that we would have to do it as quickly as possible, because the C. I. O. were working in the plant."

Trial Examiner Batten: Yes, that is as I recall it. I just wanted to be sure.

Q. (By Mr. Engelhard). Now, Mr. Kokalj, on the 13th at any meetings you attended Mr. Harold Falk was not present?

A. No, sir.

Q. As far as you know the only meeting he attended while the men were meeting in the basement of the hospital was on the 12th?

A. Yes.

Q. While you were at the meeting at which Mr. Harold Falk was present, did you ever hear him say:

"Well, we would have to incorporate, and that we would have to do it as quickly as possible, because the C. I. O. were working in the plant?"

A. No, sir.

1927 Q. Are you a member of the Independent Union, Mr. Kokalj?

A. Yes, sir.

Q. Do you hold any office in that union?

A. No, sir.

Q. You are just one of the rank and file?

A. Yes, sir.

Mr. Engelhard: That is all.

Cross-Examination.

Q. (By Mr. Rissman) Tell us about the conversation you had with Richard Falk before the meeting of April 8th in the cafeteria?

A. Well, he just stated to some of the members things

about the Wagner Act, the small Wagner act or Severson Bill.

Q. Tell us as closely as you can remember what conversation took place at that time?

A. Well, I couldn't tell you that, I couldn't answer that question.

Q. Who was present at that time?

A. The Works Council.

Q. In the cafeteria?

A. Yes, sir.

Q. Was it a special meeting of the Works Council?

A. I think it was a special meeting, yes, sir.

Q. By whom was it called?

A. Well, I was notified by one of the members of the 1928 Works Council.

Q. And was everybody present?

A. I don't think everybody was of the Works Council, there were one or two men that wasn't there?

Q. How was Richard Falk there, was he invited?

A. No, he come down—well, he was there when I come in, he was at the meeting.

Q. You came late to that meeting, too?

A. Well, I usually come in about five minutes late.

Q. When you came was he talking or somebody else talking? What was going on when you came into the room?

A. Well, they were all talking as far as that goes.

Q. Somebody asked Richard Falk a question about the Severson Act?

A. Not that I remember.

Q. Do you recall how he happened to explain the Severson Act?

A. No, I don't.

Q. You don't remember anything he said about it?

A. No, sir.

Q. Were there minutes made of that meeting?

A. No, sir.

Q. Do you know if any record of it was kept?

A. No, I don't.

Q. Was the entire Works Council there or just the 1929 employee representatives?

A. Just the employee representatives.

Q. Do you recall anything that was said at that meeting by anybody?

A. Well, there were a lot of questions asked, I don't remember what they were.

Q. You don't remember any one question?

A. No, sir.

Q. You don't remember any one answer?

A. No, sir.

Q. Did you say anything at that meeting?

A. No, I didn't.

Q. What did Mr. Connell say at the meeting of April the 13th?

A. I don't remember what he said, he was there only a short time.

Q. Well, you said there were some questions asked of him.

A. Yes, but I don't remember what they were.

Q. You don't remember any question?

A. No, sir.

Q. You don't remember any answer?

A. No, sir.

Q. The meeting on April 12th, is that the meeting where some of the boys were at one end of the table joking and talking?

1930 A. Well, they were on the 13th, too, as far as that goes.

Q. I am talking about the 12th.

A. Yes.

Mr. Engelhard: Will you please raise your voice, it is a little hard to hear you so far.

Q. (By Mr. Rissman) Was that the meeting you testified you probably were not paying much attention to what was going on?

I think you said, "I wasn't paying much attention to business."

A. Yes, sir.

Q. You say the same conditions existed at the April 13th meeting and at the first meeting—that is, at the first meeting of April 13th?

A. Yes, sir.

Q. Where did you work before you worked for the Falk Corporation?

A. I worked at the Perlick Brass Company.

Q. What kind of work did you do there?

A. I was doing assembly work.

Q. How long did you work there?

A. One month.

Q. Where did you work before that?

A. Nowhere.

Q. In your work of crane maintenance do you get around the different parts of the factory?

A. Yes, sir.

Q. You have no special work-bench or table, have you?

A. No.

Q. You just go out where the equipment is and perform the work there?

A. Unless something can be brought down to be repaired.

Q. In other words, if it is a small part?

A. Yes, sir.

Q. But most of your work is on the equipment?

A. Yes, sir.

Q. How long have you been a member of the Independent Union?

A. About April the 20th. I don't know the exact date I joined.

Q. 1937?

A. Yes, sir.

Q. Do you know at the present time, Mr. Kokalj, what preference Mr. Falk has for labor organizations?

A. No, I don't.

Q. Did you ever know?

A. No, sir.

Mr. Rissman: That is all.

Redirect Examination.

Q. (By Mr. Engelhard) Mr. Kokalj, did any officials of the company influence you with regard to joining the Independent Union?

A. No, sir.

Q. When did you make up your mind to join the Independent Union if one would be formed?

A. Well, the second day the applications were out. The first day there wasn't enough applications; so I didn't sign; I had to wait until the next day.

Q. Had you been approached by anybody belonging to the C. I. O. to join the C. I. O. prior to that time?

A. No, sir.

Q. Have you been approached since?

A. No, sir.

Q. You selected the Independent Union then of your own free choice?

A. Yes, sir.

Mr. Engelhard: That is all.

Q. (By Mr. Engelhard) By the way, how old are you? I don't think the record shows that.

A. 23.

Q. Are you a married man?

A. Yes, sir.

Q. Family?

A. No, sir.

Mr. Engelhard: That is all.

Trial Examiner Batten: Mr. Clark?

1933 Mr. Clark: I have no questions.

Trial Examiner Batten: That is all.

(Witness excused.)

Mr. Engelhard: Call Mr. Trost.

JOE H. TROST, a witness called by and on behalf of the respondent, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Engelhard) What is your full name?

A. Joe H. Trost.

Q. Where are you employed, Mr. Trost?

A. At the Falk Corporation.

Q. How old a man are you?

A. 42.

Q. How long have you worked for the Falk Corporation?

A. Well, I am back there going on 9 years.

Q. You mean that your present tenure has been 9 years?

A. No, not altogether; about 12 years altogether.

Q. That is what I am asking you, you have worked for the Falk Corporation for 12 years but not continuously?

A. Yes, sir.

Q. Now, can you see me?

A. Yes.

Q. Can you hear me?

A. Oh, yes.

1934 Q. Now, Mr. Trost, what kind of work are you doing at the plant?

A. Assembling.

Q. How long have you been doing that work?

A. Well, I have been doing different jobs off and on; I started, when I come back there I started in shop 3, as-

assembling Diesel engines, and I was taken off and taken over to Shop 2 on some assembly couplers, and stuff like that, and from then they got a new coupling in there, they call it the Ross coupler, and I started the thing off; that is something new.

Q. You do your assembling there at the plant?

A. Yes, sir.

Q. That is, the machinery that is assembled and shipped out?

A. Yes, sir.

Q. That is the last part of the job, is it, before the machinery is shipped?

A. No, what I am doing now, that is the first part, that is the assembly before—the assembling before it gets drilled and bored.

Q. Are you a member of the Independent Union?

A. Yes, sir.

Q. When did you become a member of it?

A. I think the 20th of April.

1935 Q. You were one of the signers of the articles of incorporation?

A. Yes, sir.

Q. Now, Mr. Trost, when did you first hear of any movement to form an Independent Union?

A. On the 12th, when I was notified to come down under the hospital for a meeting.

Q. Who notified you?

A. John Brever.

Q. What did he say to you?

A. He said, the Works Council called a meeting, or the present Works Council was calling a meeting and all the old representatives were supposed to come down

Q. Were you an old representative?

A. I was.

Q. When did you leave the Works Council?

A. The last election, the last term I was off.

Q. When was the last election held?

A. I don't recall.

Q. Well, had you been a member of the Works Council to the end of the year 1936?

A. Yes, sir.

Q. Now, at the time when you were notified by John

Breuer that there was a meeting in the basement of the hospital did he say to you what the meeting was for?

1936 A. No, sir, he never mentioned nothing.

Q. Well, you went to that meeting?

A. Yes, sir.

Q. What occurred at that meeting?

A. Well, Mr. Breuer was chairman, he got up and he read a letter stating some facts, that the Wagner Bill, whatever it was, I couldn't use the language, and he called the meeting; they went on with the session.

Q. Well, what was discussed among the men, what did they discuss?

A. Well, there wasn't much discussion at the start; they wanted to get some dope on that Wagner Bill and the Severson Act.

Q. From whom did they want to get this dope?

A. They wanted to get it off Mr. Harold Falk.

Q. Then what happened?

A. Well, they sent out for Mr. Falk.

Q. Who was sent out?

A. Mr. Kokalj, whatever his name is.

Q. This gentlemen who was on the stand before?

A. Yes, sir.

Q. After Mr. Kokalj was sent out did Mr. Falk appear?

A. Yes, he come in.

Q. What was the conversation had between Mr. Falk and the men?

1937 A. Mr. Falk come in and he stated he didn't know much about the Wagner Act or the Severson Act as yet, and he explained further he was going downtown the following day to get some more dope on it.

Q. What else was said by Mr. Falk?

A. Well, he talked on certain things, I couldn't recall what it was all about, but there wasn't much of a conversation.

Q. How long was Mr. Falk there?

A. About 15—10 or 15 minutes.

Q. Was there anything said about a pay raise being moved up from June 1st to May 1st?

A. Yes, there was something brought up about the pay raise.

Q. Who brought it up?

A. Mr. Stichmann.

Q. What did Mr. Stichmann say?

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A. He asked him if he could not raise the wages ahead a month, to make the fellows feel more satisfied in the shop.

Q. What did Mr. Falk say to that?

A. Mr. Falk says, "Well, I ain't so stiff I can't bend."

Q. Did you hear Mr. Wilfer make a statement to Mr. Falk?

A. Yes, he was talking all the time.

Q. What is that?

A. He was talking all the time.

Q. Do you recall any particular statement Mr. Wilfer made at that meeting?

A. No, I never paid no attention to it.

Q. As to that meeting, was it conducted in a formal manner? By that I mean, the men all sitting around listening to what one person said, or was there commotion?

A. Oh, they were all talking, about four or five different groups.

Q. Which group were you in?

A. I was sitting with Mr. Landry over there back of a stool.

Q. Were you in a position to hear what Mr. Landry heard?

A. Well, I should have, we were talking together, I should have heard what he did.

Q. What were you talking about?

A. A lot of nonsense, that was all.

Q. Was there any discussion at the meeting of the 12th regarding organization an independent union that you heard, Mr. Trost?

A. There was something said about—there was something said about signing some papers, I know that. I even says Mr. Landry, I says, "Well, if you are game," I says, "I'll sign."

Q. Do you remember who said that?

A. Who made that motion or how it come about, I don't know. It might have been said by one of the members.

Q. Was that the meeting of the 12th you are now speaking of?

A. The meeting of the 12th.

Q. What papers were discussed?

A. Well, there was some discussion about incorporating, but this wasn't brought up by no officials, anything like that; that was just discussed among the men.

Q. Was there a discussion among the men as to whether

or not a union should be organized—an independent union should be organized?

A. Well, the discussion then ended, that we would have to start something.

Q. Did you know what to start?

A. I didn't know what we were going to start in the beginning.

Q. How long did that meeting of the 12th last?

A. Oh, about an hour and a half, something like that.

Q. When you were there did anyone else representing management appear?

A. On the 12th?

Q. On the 12th.

A. Nobody but Mr. Harold Falk.

Q. Now, what was the decision of the meeting before the adjournment?

A. Well, that we would meet the following day to get some more information from Mr. Harold Falk on that 1940 Severson and Wagner Act.

Q. Did you go to the meeting of the 13th?

A. Yes, sir, I attended all of them.

Q. How many meetings were there?

A. Four.

Q. On the 13th?

A. 12th, 13th, and on the 14th.

Q. You mean you attended all four meetings on the 12th, 13th, and 14th?

A. Yes.

Q. There were two on the 13th?

A. Two on the 13th.

Q. Now, who was chairman of the first meeting of the 13th?

A. Of the 13th?

Q. Yes.

A. Wolf.

Q. And the second meeting of the 13th?

A. Wolf.

Q. And the meeting of the 14th?

A. Wolf.

Q. Do you know what happened to John Brever?

A. John Brever went home sick after the meeting on the 12th; he was sick at the time of the meeting.

Q. Now, at the meeting on the 13th, the first meeting of the 13th, what occurred at that meeting?

1941 A. Well, we all got together and we wanted to find out the purpose of getting some information from Mr. Harold Falk, so we got to talking and we sent out Mr. Kokalj again to get Mr. Harold Falk.

Well, he went upstairs to try to get him and he wasn't at the plant; so young Harold Falk come down.

Q. You mean Richard Falk?

A. Richard Falk.

Q. Now, what occurred when Mr. Richard Falk came to the meeting?

A. Well, he come down, he says he didn't know—he didn't think he knows any more about it than his dad did.

Q. About what?

A. About the Wagner and the Severson Acts.

Q. What did Richard Falk say besides that?

A. I couldn't repeat none of that.

Q. Well, did you hear Richard Falk at that meeting say that you should incorporate, it would cost five dollars to incorporate, and it would take three men to sign the papers?

Mr. Rissman: I object to the question. The witness says he does not know what Richard Falk said, and now Mr. Engelhard is attempting to testify for him.

Trial Examiner Batten: I think it is all right for Mr. Engelhard to ask the question of the witness.

Mr. Rissman: The question is leading and suggestive.
1942 Trial Examiner Batten: Well, the witness has testified that he had no recollection of anything else further than was said.

Now, if Mr. Engelhard wants to ask that question, I see no objection. It may be a test of his memory.

Mr. Engelhard: Will the reporter read the question?

(The question was read.)

Mr. Engelhard: Read it again, please.

(The question was re-read.)

Q. (By Mr. Engelhard.) Did you hear Mr. Richard Falk make any such statement?

A. No, sir.

Q. Were you in a position so that you would have heard it if such a statement had been made by Richard Falk?


A. I surely could have heard it.

Q. You say you were sitting beside Mr. Landry?

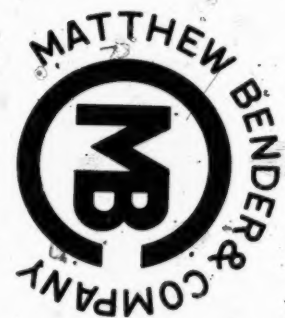
A. Right alongside of him; I was sitting alongside the post and Mr. Landry was sitting west of me.

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Q. Now, at that first meeting after Mr. Richard Falk had been there for a period of time, how long would you say?

A. He was there for about ten minutes.

Q. What happened after Richard Falk left?

A. Well, after he left I don't know just—I think that meeting was adjourned a little while after.

Q. Did anyone else of management appear at that meeting?

1943 A. Mr. Connell stepped in for a while.

Q. What did Mr. Connell say?

A. Well, his answer was that he didn't know anything about that Severson Act, and then several fellows asked a couple of questions, but what they were, I don't know. He was talking with them on the other end of the table.

Q. How long did Mr. Connell stay?

A. He stayed about five minutes.

Q. Then what happened?

A. Right after that the meeting was adjourned.

Q. Now, after the meeting was adjourned what did you do?

A. I just got out and walked back to my job.

Q. Did you stay on the job the rest of the afternoon?

A. I stayed on my job until I was notified to come back to another meeting by Mr. Greget.

Q. While you were on the job did you have any conversation with any of the boys?

A. No, sir.

Q. Did you have any conversation while you were on the job with Mr. Harold Falk?

A. No, sir, I passed Mr. Harold Falk on the way going out from the meeting, the first meeting on the 13th.

Q. Did you have any conversation with him?

A. No, there were two or three other fellows talking to him at the electrical department.

1944 Q. That was between meetings?

A. In the aisle, yes.

Q. Now, you went back to the second meeting of the 13th?

A. Yes, sir.

Q. What occurred at that meeting?

A. Well, I think one of the fellows that was talking to Mr. Harold Falk must have gotten some information that they could go ahead with the Independent Union, because he called this meeting back and he told us that we could go ahead with it.

Q. Go ahead with it as to what?

A. As to going and finding out about getting any more information, where we could get it.

Q. Who reported that to you?

A. Who reported to me?

Q. Yes, that Mr. Harold Falk made such a statement?

A. Oh, he didn't make that statement; I didn't say he made that statement.

Q. You said that you then heard Mr. Harold Falk say it was all right to go ahead with the Independent Union.

A. Well, that was said by Mr. Greget when he came over and told me to come back to the meeting.

Q. Then you went to the meeting?

A. I went to the meeting.

Q. And what occurred at that meeting?

A. Well, we got together and appointed three fellows to go and see about a lawyer.

Q. Before those three men went to see about a lawyer, was there any discussion about a lawyer?

A. Yes, sir, Mr. Padway's name was mentioned, and a fellow by the name of Fish, something like that.

Q. Was there a Mr. Quick's name mentioned?

A. Mr. who?

Q. Mr. Quick.

A. Mr. Quick?

Q. Yes.

A. Yes, I think Mr. Quick, something like that.

Q. Mr. Landry was sitting right near you, wasn't he?

A. Yes, sir.

Q. Did you hear him mention Mr. Padway and Mr. Quick?

A. He either mentioned Mr. Padway or Mr. Quick, one of the two, I couldn't say which one he mentioned.

Q. Was any other lawyer mentioned?

A. No, sir.

Q. After those lawyers' names were mentioned what was discussed?

A. Well, there was a discussion, to get three fellows together to go up and find out about a lawyer.

Q. Go where?

A. Well, they didn't state where they should go, but they decided they were going and ask management, I guess.

Q. That is, the boys decided that the three men should go to see management about a lawyer?

A. Yes, sir.

Q. Was this before the committee was appointed or after the committee was appointed?

A. After the committee was appointed.

Q. Was the committee given any instructions that you heard as to what the committee should do?

A. Well, they wasn't instructed just what they should do, no.

Q. How long was the committee gone?

A. Oh, I guess we were waiting around there about half an hour, talking foolishness until they come back.

Q. Did the committee make a report when they came back?

A. Well, they come back and said there were two or three lawyers mentioned by one of the officials, or officers, I don't know which one, I wasn't there; they decided they would take Mr. Burke, I guess.

They asked me if I was satisfied, and I says, "I don't care, as long as you get somebody that knows the setup, that was all I was in favor of. I didn't want no green-horn at it."

Q. Now, after that report was made what happened?

A. Well, they got together and get a collection.

Q. One dollar from each man?

1947 A. Yes, I even paid out five dollars at that time, for fellows that didn't have any.

Q. How much money did they collect?

A. Seventeen dollars.

Q. And out of that seventeen dollars you say you paid five?

A. Four or five.

Q. What was that collection for?

A. Attorney's fees.

Q. Was there any arrangement made at that meeting, that is, the second meeting of the 13th—

A. Yes, sir.

Q. —about anybody going down to see Mr. Burke after the committee reported?

A. Well, yes, they had an appointment, I guess, for ten o'clock the following day, the three fellows.

Q. Yes?

A. And I am pretty sure they went down.

Q. I mean after the meeting of the 13th, the second meeting of the 13th, was there any arrangement made for these three men and others to go down and see Mr. Burke?

A. Yes, there were some more to go along.

Q. Did you go there?

A. Yes, sir.

Q. How many men went to Mr. Burke's office?

A. I couldn't recall, there were about ten of them.

1948 Q. How were those ten men selected, do you remember?

A. Well, from the meeting.

Q. Who selected them?

A. The chairman.

Q. Did he pick out ten men or did some of the men voluntarily go down?

A. Some of them volunteered and some of them he picked.

Q. But finally it was agreed that the nine or ten should go down?

A. Yes, sir.

Q. You went down?

A. Yes, sir.

Q. Now, was Mr. Harold Falk present at any of those meetings on the 13th?

A. No, sir.

Q. The only meeting—the only one of the meetings on the 12th, 13th, two, and the 14th, one, the only meeting Mr. Harold Falk was present at was the one on the 12th?

A. The one on the 12th.

Q. And what occurred at Mr. Burke's office?

Trial Examiner Batten: I believe we will recess for about ten minutes, Mr. Engelhard, before starting on the next meeting.

Mr. Engelhard: I am glad to have the recess, Mr. Examiner.

1949 Trial Examiner Batten: And let's make it ten minutes so that we can make up the ten minutes or so we lost this morning.

(A short recess was taken.)

Trial Examiner Batten: I believe we are ready to proceed.

Mr. Engelhard: What was the last question?

(The record was read.)

Q. (By Mr. Engelhard.) Will you tell us in substance what occurred at Mr. Burke's office?

A. Well, we all got down there and Mr. Burke come in and we asked him about what he knew about setting up a union, and he started explaining certain things about how far we could go and what we could do, and Mr. Clark come

in and started reading certain sections out of the Severson Act, different clauses, what we could do, and all that, and during that time, why, he was interrupted by one of the men, he asked Mr. Burke, he says, "Now, before we go any further we have only seventeen dollars among us," he says, "what is the fees going to be?"

And Mr. Burke says, well, he says, "If I set this thing up and it goes through," he says, "I will charge you; if it don't, why, we will just simply have to drop it," and that was all, so then he went ahead.

Q. How long did this meeting in Mr. Burke's office last?

1950 A. Oh, about two hours or so, something like, or a little longer.

Q. After that meeting in Mr. Burke's office you had a meeting in the basement of the hospital that afternoon?

A. Yes, sir.

Q. What was that meeting about?

A. Well, that meeting, we went back—well, everybody got his dollar back that was collected the day previous, and discussed different matters.

Q. Was there any decision made at that meeting as to whether or not an independent union would be incorporated or it would be an association?

A. Well, there was nothing said down there, only that these three fellows were supposed to go down the following day. That arrangement was made up at the lawyers' office, that these three fellows were to go back down the following day.

Q. What three fellows?

A. Mr. Greget, Mr. Wolf and Mr. Adamsky.

Q. How long did that meeting on the 14th last?

A. Just a short while.

Q. There were no members of management of the Falk Corporation present at the meeting on the 14th?

A. No, sir.

Q. I don't know whether I asked you this question or not, but was Mr. Harold Falk at any meetings other than the 12th?

1951 A. No, sir.

Q. You were at four meetings during the entire time the meetings were in session?

A. Yes, sir.

Q. Were you at the meeting of the 8th of April, the last Works Council—

- A. No, sir.
- Q. You were not?
- A. No, sir.
- Q. Someone testified here last week that you were a foreman or a straw-boss or something.
- Were you ever a foreman?
- A. Not that I know of.
- Q. Were you ever a straw-boss?
- A. Not that I know of.
- Q. Well, did you ever have charge of any men?
- A. I never had charge over men, I had charge over certain work I had to put together, and I would suggest that it was done right, that was all.
- Q. Did you ever have any men when working with you, under your supervision?
- A. No, I never supervised anybody.
- Q. In making some of these assemblies it takes more than one man to do the job?
- A. Yes, it takes about five or six on some of them.
- 952 Q. When there were assemblies made in which five or six men worked, does one man take the lead?
- A. Yes; one of them takes the lead. The boss puts one of them at the lead, to see it is put together.
- Q. The boss designates the men who are to work together?
- Trial Examiner Batten: Would you say now the boss designates the man who is going to be the lead man?
- The Witness: Well, he picks out the one he figures that can watch the job best and he puts him at the head of it.
- Q. (By Trial Examiner Batten.) These five or six men, you mean they are all mechanics or some helpers?
- A. Some helpers and some mechanics.
- Q. Has it ever occurred in your experience when you were assembling a machine that you had to direct some of the men how to do the work, how to put it together?
- A. Well, they generally make a practice at the Falk Company, to send apprentices around.
- Q. Apprentices?
- A. Apprentices, young fellows just learning the trade come over and want to learn how.
- Q. And you have to direct them?
- A. Well, show them just what it is all about, yes.
- Q. When you are assembling this machine you are responsible for it being properly assembled.
- A. Yes.

1953 Q. Don't you have to tell the men that are helping you how to do it, if they are doing it wrong?

A. Yes.

Q. You direct them as to the work they are doing on that assembly?

A. On that assembly, yes.

Q. (By Mr. Engelhard.) Now, Mr. Trost, after the meeting of the 14th, at which meeting you said it was decided that three men would go down to Mr. Burke's office the following day, what happened between the 14th and the 18th with regard to forming an independent union?

A. Well, between the 14th and the 18th, why, that was mostly set up between some of the other fellows, I didn't have no hand in that at all.

Q. Were any application blanks printed?

A. Yes, there was some application blanks printed.

Q. Do you know who made arrangements for printing application blanks?

A. Down at the lawyers' office, that was arranged down there.

Q. And do you know who actually attended to printing the application blanks?

A. No, I couldn't tell you who done that.

Q. Now, were you present at the meeting of the 18th at the North Avenue Auditorium, on Sunday the 18th of April?

1954 A. Yes, sir.

Q. Will you tell us what occurred at that meeting?

A. Well, there was a meeting called up there and a lot of fellows got there and they opened up the meeting. I guess they got Mr. Price as chairman of that meeting, and they made a hell of a rumpus, practically it was a disturbance all through the whole meeting.

Q. (By Trial Examiner Batten:). What was the disturbance about?

A. Well, just questions coming up among the fellows.

Q. What questions?

A. That I couldn't tell you.

Q. You can't remember any question that caused any disturbance?

A. Well, there was some C. I. O. fellows got up, and fellows got up and got talking about the C. I. O., and got talking about everything else.

Q. (By Mr. Engelhard.) Well, was there any action taken at that meeting by the meeting?

A. Well, they went through; as far as the chairman was, why, he tried to keep the meeting in order but he had a hell of a time doing it.

Q. Who addressed the meeting?

A. Who addressed the meeting?

Q. Yes.

1955 A. Well, Mr. Greget, and some guy spoke there, and if I ain't mistaken Mr. Landry said something, I don't know what he said.

Q. Anybody else?

A. Nobody else that I know of.

Q. Well, was Mr. Burke there?

A. He was called on, yes.

Q. Did he speak?

A. He answered some questions.

Q. Well, what was the final action of the meeting, if there was any action taken at that meeting?

A. Well, there was no action taken as far as I know; it just simply was a flop to my estimation, I don't know; they didn't get nowhere with that meeting.

Q. Well, after the meeting had adjourned did you have any conversation with Mr. Burke?

A. Yes. I was talking to Mr. Burke down in a bar room.

Q. And with whom else were you talking?

A. Well, Mr. Greget was there and several other fellows, and I guess Mr. Greget went home.

When Mr. Wilson approached Mr. Greget and asked him if it was all right, if he could get two or three more signers, if he would come down on Monday morning and sign this thing, the corporation papers, if it would be all right to go ahead with the thing, and Mr. Burke said he didn't see why it shouldn't be.

1956 So I offered Mr. Wilson, if he would sign, I would sign; if he got another fellow, why, we would go down there Monday.

Q. What was done?

A. Well, Monday morning Mr. Wilson come over and he says he had another fellow, so we punched out and went down to the lawyers' office.

Q. What did you do?

A. Well, we sat down and had him explain the whole thing to us, and we signed it.

Q. What did you sign there?

A. The corporation papers.

Q. Do you know what was done with this—with those incorporation papers that day?

A. They were sent to Madison.

Q. Now, that was on the 19th?

A. Yes.

Q. Now, do you recall signing a letter with Mr. Wilson and Mr. Menz addressed to the Falk Corporation on the 20th?

A. Yes, sir.

Mr. Engelhard: Mr. Rissman, do you know what the number of that exhibit is?

Mr. Rissman: Which one?

Mr. Engelhard: That letter of the 20th.

Mr. Rissman: 22, I think.

1957 Q. (By Mr. Engelhard.) I show you Board's Exhibit No. 22, Mr. Trost, and ask you whether or not you signed that letter with Mr. Menz and Mr. Wilson?

A. Yes, sir, that is my handwriting on there.

Q. Do you know whether that was delivered personally or whether that was mailed?

A. I think it was delivered personally if I ain't mistaken.

Q. Well, who delivered it?

A. I didn't deliver it.

Q. Now, did you have a conference with Mr. Herman Falk and Mr. Connell?

A. Yes, sir.

Q. On the 23rd?

A. On the 23rd.

Q. I will show you Board's Exhibit No. 21, and ask you whether or not you have ever seen the original of that?

A. Yes, sir.

Q. Will you explain how you obtained the original of that?

A. How we obtained it?

Q. Yes.

A. Well, we were called in to Mr. Falk's office.

Q. Who called you in?

A. I don't know, I was told to come in with Mr. Wilson; that is all I know.

Q. You, Mr. Wilson and Mr. Menz went to Mr. Herman Falk's office?

1958

A. Yes, sir.

Q. In response to a call?

A. Yes, sir.

Q. And you had a conversation with Mr. Falk?

A. Yes, sir.

Q. Was Mr. Connell there?

A. Yes, he was around there.

Trial Examiner Batten: Mr. Engelhard, I wonder if you would mind asking him who called him in this meeting.

Q. (By Mr. Engelhard.) Do you know who called you in?

A. I was notified by Mr. Wilson.

Q. This was three days after you had sent this letter of the 20th to the Falk Corporation?

A. I think—I don't know exactly whether three days or four days.

Q. Well, this letter, Board's Exhibit No. 21, is dated the 23rd. You had previous to that sent Exhibit No. 22, which is the letter of the 20th?

A. I didn't send it, no.

Q. What is that?

A. I ain't the one that sent it; I didn't send any of them letters.

Q. Well, did you sign the letter of the 22nd?

A. I signed it.

1959 Q. You don't know just who did the physical work of sending the letters?

A. No, I don't know that.

Q. Who acted as chairman of this committee of three, Mr. Wilson, you, or Mr. Menz?

A. Well, Mr. Wilson was president.

Q. Well, was he president at that time?

A. How?

Q. Was he president on the 23rd?

A. After the meeting we had on the following Saturday.

Q. That was on the 24th?

A. On the 24th.

Q. I mean prior to that time, you, Mr. Wilson and Mr. Menz were the organizers of the corporation?

A. Yes, sir.

Q. You signed the incorporation papers?

A. Yes, sir.

Q. And it was not until the 24th that you had a meeting at which the union was organized?

A. Yes, sir.

Q. The Independent Union was organized.

A. Yes, sir.

Q. (By Trial Examiner Batten.) Mr. Trost, the question Mr. Engelhard asked you was, who acted as chairman of this committee, or was it in charge of by anybody?

1960 A. Mr. Wilson.

Q. (By Mr. Engelhard.) At this conference in Mr. Falk's office on the 23rd who was spokesman?

A. Mr. Wilson.

Q. What occurred at that conference, what did Mr. Wilson say, what did you say and what did Mr. Lenz say?

A. I couldn't recall the words he said.

Q. Well, give us the substance of the conversation?

A. I didn't say nothing at all according to that.

Q. What did any of the men say at that meeting?

Let me put it this way: what were you there for?

A. I think Mr. Wilson was to go up and find out whether the Falk Company would "represent" the union.

Q. Whether the Falk Company would what?

A. "Represent" the Independent Union.

Q. What do you mean by that, whether the Falk Company would "represent" the union?

A. "Accept them", I mean.

Mr. Clark: Recognize them.

The Witness: Recognize them, that is what I mean.

Q. (By Mr. Engelhard.) What did you say, what did you gentlemen say to Mr. Falk and Mr. Connell as to the membership that the workers represented?

A. Well, he was supposed to call us in on a later date on that, I guess. I don't recall that.

1961 Q. Now, after the 23rd you said you had an organization meeting at the North Avenue Auditorium?

A. Yes, sir.

Q. At that meeting by-laws were adopted?

A. Yes, sir.

Q. And a board of directors elected?

A. Yes, sir.

Q. And the board of directors—

A. Elected the president.

Q. And elected the officers?

A. Yes, sir.

Q. Now, what would you say was the purpose of these meetings that were held in the basement of the hospital?

A. To get some dope on how far we could go in setting up a union, get information on the Wagner Bill to see what we could do about it.

Q. And when you got the dope on what you could do under the law you proceeded to organize?

A. Yes, after we got the dope, we got the dope from the lawyer.

Q. Well, didn't you get what you called "dope" from Mr. Harold Falk and Richard Falk?

A. No, we didn't know no more after they left than what we did when they got there.

Mr. Lamfrom: Off the record, now, please.

962 (Discussion off the record.)

Mr. Engelhard: That is all.

Cross-Examination.

Q. (By Mr. Rissman) You signed the articles of incorporation?

A. Yes, sir.

Q. Did you read them before you signed them?

A. I certainly did.

Q. Did you know at the time you signed them that there would be a meeting of the members only once a year?

A. The general meeting, yes.

Q. Did you know also when you signed it that the affairs of the corporation would be conducted by the board of directors?

A. Yes, sir.

Q. And did you know that the officers are elected, not by the members, but the board of directors?

A. Yes, sir.

Q. You knew all of those things?

A. Yes, sir.

Q. Will you answer? When you shake your head it does not appear in the record.

A. Yes, sir.

Q. You felt that was the kind of organization you wanted to represent the Falk employees?

963 A. Well, I didn't know they was going to go through with it or not; that was what I wanted to have go through, yes; that was why I signed it; I figured it was the right and fair thing to do.

Q. You read the by-laws of the corporation?

A. Yes, I read the by-laws that we had temporarily set up, yes.

Q. You felt those were proper rules and regulations for the operation of the union to represent the Falk employees?

A. To start with, yes, and have the members of the union change them the way they see fit.

Q. At the next annual meeting?

A. Yes, sir.

Q. When is the next meeting of employees going to be held?

A. This next one now that we are going to have?

Q. The next meeting of employees, the next meeting of stockholders and members of the corporation?

A. The one that is coming—

Q. The next one.

A. Next Saturday.

Q. Is that the next annual meeting?

A. Yes, that is the next meeting we have got.

Q. You read this letter of April 20th, 1937, before you signed it?

A. I glanced over it, yes.

1964 Q. You read it?

A. I certainly did.

Q. At that time did you read the following part of this letter addressed to the Falk Corporation of April 20th, 1937:

"We are informed that approximately 400 employees of this corporation have signed applications to date."

Now, did you know that 400 had signed applications?

A. I was pretty sure of it.

Q. How were you pretty sure of it?

A. The applications.

Q. Did you count them?

A. No, I did not count them.

Q. "We have good reason to believe that a majority of employees eligible for membership will become members of this organization."

Did you read that?

A. Yes, sir.

Q. How did you know that?

A. Well, I talked to the fellows.

Q. How many did you talk to?

A. How many did I talk to.

Q. Yes.

A. Oh, I talked to quite a few of them.

Q. Did you talk to 300?

A. No, not exactly, I wouldn't say 300, no.

1965 Q. Well, after this letter was sent to the Falk Corporation Mr. Herman Falk sent this reply that is in evidence as Exhibit 21.

Mr. Engelhardt: There is no evidence he sent that as a reply. He testified that he got that while he was at that conference on the 23rd.

Q. (By Mr. Rissman) Where did you get this?

A. Well, I think Mr. Wilson got it, yes, I didn't; I was with him.

Q. Now, at the meeting of April 23rd when this was given Mr. Wilson what evidence of the number of employees that you had in your organization was given to Mr. Falk?

A. Of the number of members?

Q. Yes.

A. I couldn't recall just the amount.

Q. Well, was it merely somebody's statement or was he shown some application cards?

A. He must have got it off the application cards, I guess.

Q. Well, at the time this was written did you see any application cards at this meeting?

A. At that first union meeting?

Q. No, at this meeting of April the 23rd when this was given to the committee.

A. I didn't see any application cards at that time, no.

Q. You read this letter at that time?

66 Mr. Engelhard: You mean the original of that, do you not, Mr. Rissman?

The Witness: Not this one.

Q. (By Mr. Rissman) Or one like it?

A. I read something like it, yes.

Q. You read it?

A. Just like it.

Q. Now, this letter says—it is addressed to Fred Wilson, Joseph Trost and Carl Menz and is signed by Herman W. Falk, president, Falk Corporation.

"After conference with your committee, and upon your statement that your organization represents the majority of our employees and that you request that we enter into negotiations with you as the collective bargaining agency for all of our employees, we advise you that we will so recognize your organization."

At that time what other than the mere statement was given to Mr. Falk, indicating the number of members in your union?

A. Just a statement, that was all.

Mr. Lamfrom: Mr. Rissman, I want to find out, if I may ask, in these articles of incorporation, Exhibit 26, and the by-laws, Exhibit 27, that there is a meeting of the members of the organization, once a year—you asked that question—and

I would like to have you point out where you find that.

967 Mr. Rissman: Will you wait until I finish by cross-examination.

Mr. Lamfrom: Sure, but sometime after that I would like to have you point out where you found that.

Mr. Rissman: I will.

Q. (By Mr. Rissman) You said that on April the 13th Mr. Harold Falk did not appear at either one of the meetings, either in the morning or afternoon.

A. Yes, sir.

Q. But you said when you were gone out of the meeting you did see him talking to two or three fellows?

A. I seen just two fellows stop him and start talking at the electrical department.

Q. Do you know who were those fellows?

A. One was Les Greget.

Q. Do you know who the other was?

A. I think Mr. Wolf, if I ain't mistaken.

Q. (By Mr. Engelhard) Just one question, there, so that we can get it clear.

This electrical department is how far from the hospital, Mr. Trost?

A. Well, I would say about 250 to 300 feet, something like that.

Q. (By Mr. Rissman) Do you know how long Mr. Falk had been standing there talking to these two men?

1968. A. No, sir, I couldn't recall that, because I just walked by and went back to my work.

Q. You don't know if there were more than just three of them before you came by, do you?

A. No, sir.

Q. Or you don't know if anybody else came up after you passed?

A. They just met Mr. Falk at the time and I kept on walking; they stopped and talked to him.

Q. Do you know if anybody else came up there after you kept on walking?

A. That I don't know, because I kept on going.

Q. How were the corporation papers sent to Madison on the 19th of April?

A. How were they sent?

Q. Yes.

A. Through Mr. Clark.

Q. Do you know if they were sent by mail or by special messenger?

A. That I couldn't say.

Q. But they were signed by you three men on the 19th?

A. Yes, sir.

Q. Will you answer for the record, please.

A. Yes, sir.

Mr. Rissman: That is all.

1969 Mr. Lamfrom: I now ask you if you will point out where there is anything in the articles or by-laws, which are exhibits, which show that there shall be a meeting once a year of the members of this corporation.

Mr. Rissman: I submit, if the Examiner please, that the articles and by-laws are in evidence and the witness has testified what he knew about them, and I am not to answer any questions from Mr. Lamfrom—

Mr. Lamfrom: Just a minute, I will take care of this efficient answer.

Trial Examiner Batten: May I see the exhibits, please.

I think we will recess for about five minutes, if there is no objection.

Mr. Lamfrom: We never seem to have any objection to the recess.

Trial Examiner Batten: Well, I mean as long as you are going to go through those papers.

Mr. Lamfrom: Yes.

(A short recess was taken.)

Mr. Lamfrom: Will the reporter read back the questions put to this witness by Mr. Rissman about the articles and by-laws, I don't know whether he referred to the by-laws or articles of incorporation, about the annual meeting of the members.

(The record was read as directed.)

1970 *Redirect Examination.*

Q. (By Mr. Lamfrom) Now, Mr. Trost, when you went to the office of Mr. Burke you said you read these articles of incorporation.

A. Yes, I read them over.

Q. Now, do you at this time know what is in these articles without refreshing your memory?

A. No, sir.

Q. Do you know whether there is anything in the articles of incorporation about meetings?

A. Something in there about meetings, certainly.

Q. Do you know what the specific provision is?

A. Well there is to be an annual meeting and a meeting every month.

Q. Do you know whether that is in the articles of incorporation or whether that is the by-laws?

A. I think the by-laws.

Q. I am speaking about the articles of incorporation.

A. I couldn't tell you offhand if it is in there or not.

Q. Do you know what the articles of incorporation or by-laws provide with regard to meetings? I mean, you have a memory of them now.

A. Well, yes, they can call a special meeting if they want to.

1971. Q. Well, do you know what the specific provision of the by-laws is with respect to such meetings?

A. What do you mean, the routine on it, to have—

Q. Yes.

A. Well, the board of directors can call—

Q. I am asking you, Mr. Trost, whether you have in mind now the provision contained in the by-laws pertaining to such meetings.

A. No, I haven't.

Q. Do you know that there is an annual meeting of the members?

A. Yes, sir.

Q. That is to be held on the first Sunday in May, beginning with the year 1938?

A. That is the regular meeting.

Q. That is the annual meeting, and you know that "a special meeting of the members of said corporation may be called at anytime by the president, or by seven (7) members of the board of directors, provided at least two days' notice be given to the members thereof, such notice to be given as required for the annual meeting of said corporation. Regular monthly meetings of the members will be held on the first Saturday in each month at the hour of 2:30 P. M."

Does that refresh your memory now?

A. Yes, sir.

1972. Q. So you have monthly meetings of the members?

A. Every month, yes, sir.

Q. Then it is not true that the membership of the Independent Union of Falk Employees meets once a year?

A. No.

Q. You have had monthly meetings of the members?

A. Yes, sir.

Q. Since you organized?

A. Every month.

Q. You say your next meeting is next Saturday?

A. Next Saturday is our next meeting.

Q. You can have special meetings besides your regular monthly meetings?

A. Yes, sir.

Q. If they are called.

A. Yes, sir.

Q. You can have meetings every day if they are called.

A. Twice a day if we want them.

Mr. Lamfrom: Yes. That is all.

Recross Examination.

Q. (By Mr. Rissman.) What do you understand "annual meeting" to mean, Mr. Trost?

Mr. Lamfrom: Now, I submit, your Honor, that these articles and by-laws speak for themselves. This witness cannot change the meaning of the articles or by-laws by what 1973 he understands them to mean, and it is certainly of no consequence in the issues in this case.

Trial Examiner Batten: Well, of course, I think the by-laws and articles speak for themselves.

Mr. Lamfrom: Certainly, and he cannot change them by any interpretation.

Mr. Rissman: I just want his one answer to this question and then I am through.

Trial Examiner Batten: Of course this witness signed the articles and presumably read them at the time, and was the organizer of it; so I think he is qualified to speak as to what he thinks it means. If he isn't, I don't know who would be.

Being one of the organizers and signers of the original articles, I think he is qualified to state what is meant when he signed it. If there is any question concerning contracts certain of the parties thereto have a perfect right to express any opinions they have with respect to the intent.

Mr. Lamfrom: That is true, but the person should first be given an opportunity to read over the provision of the contract if he is going to be asked questions.

Trial Examiner Batten: Let him read it over, if you prefer that.

Mr. Rissman: If the Examiner please, this question is not based upon what is in the by-laws at all; I merely asked 1974 the witness what he understood an annual meeting to mean.

Trial Examiner Batten: What was the question please.
(The question was read.)

Trial Examiner Batten: You may answer.

The Witness: An annual meeting?

Q. (By Mr. Rissman.) Yes.

A. Well, at the time I suppose I said it was once a year, but as far as I know an annual meeting is once a month.

Q. What is the difference between an annual meeting and a monthly meeting?

A. Well, an annual meeting is supposed to be once a year and monthly meetings every month.

Mr. Rissman: That is all.

Redirect Examination.

Q. (By Mr. Engelhard.) Mr. Trost, do you know what the statute of the State of Wisconsin requires as to meetings of corporate members?

A. I don't get the drift.

Q. You are not a lawyer.

A. No, sir, not by any means; I only went to grade school.

Q. You don't know whether the provision for annual meeting is required by statute or not, do you?

A. No, sir, I don't.

Mr. Engelhard: That is all.

Mr. Rissman: No questions.

1975 Trial Examiner Batten: Mr. Clark?

Mr. Clark: I have no questions, no.

Trial Examiner Batten: That is all.

(Witness excused.)

Mr. Engelhard: Mr. Mitschka.

JOHN MITSCHKA, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Engelhard.) Mr. Mitschka, how do you spell your name.

A. John Mitschka. M-i-t-s-c-h-k-a.

Q. How old are you?

A. 47.

Q. Are you an employee of the Falk Corporation?

A. Yes, sir.

Q. Are you a married man?

A. Yes, sir.

Q. Have a family?

A. Yes, sir.

Q. How long have you been employed by the Falk Corporation?

A. 26 years last March.

Q. How old were you when you started to work?

A. 21.

1976 Q. Were you an apprentice when you started?

A. No, sir.

Q. What type of work do you do now?

A. Pattern maker.

Q. Pattern maker?

A. Yes, sir.

Q. That is your trade?

A. Yes, sir.

Q. Have you been a pattern maker during these 26 years?

A. Yes, sir.

Q. Have you been on the job steadily during the 26 years?

A. Yes, sir.

Q. Except for vacations, have you ever had any lay-offs?

A. Very few.

Q. What is that?

A. Very few.

Q. Very few?

A. Yes, sir.

Q. Now, John, in what department are you employed?

A. In the pattern shop.

Q. And who is your foreman?

A. Mr. Schmidt, Walter P. Schmidt, that is, he is called the superintendent, and Frank Gauer is called assistant.

Q. Were you ever a member of the Works Council?

A. Yes, sir.

1977 Q. When were you a member?

A. From its beginning until the end of 1935.

Q. And you were not on the Works Council during the year 1936?

A. No, sir.

Q. Or 1937?

A. No, sir.

Q. Can you see me now?

A. Yes, sir.

Q. Without stretching your neck?

A. Yes, I could see you before too.

Q. Did you attend the meeting of April 8th?

A. No, sir.

Q. Of the Works Council?

A. No, sir.

Q. Did you attend a series of meetings in the basement of the hospital?

A. Yes, four of them.

Q. Four of them?

A. Yes, sir.

Q. And how did you come to attend the first meeting?

A. Some man came over to my bench and told me I was requested to a meeting below the hospital, that the Works Council is calling for its members and ex-members.

Q. Did you know what the meeting was to be for?

1978 A. No, sir.

Q. Who called you?

A. I couldn't say.

Q. Was this by word of mouth—

A. Yes, sir.

Q. —call?

A. Yes, sir.

Q. When was this first meeting?

A. Monday, April 12th.

Q. You went to that meeting?

A. Yes, sir.

Q. Were you there before the meeting was started?

A. I couldn't say.

Q. Well, who was the chairman of the meeting?

A. Mr. John Brever.

Q. What did he do in the opening of the meeting?

A. Well,—

Q. Well, I will ask the question directly: Did you hear John Brever read a letter to the group?

A. It seems to me he did, yet I wouldn't be positive on that, but if he did read this letter, he was talking with it, and then he made the statement that pretty soon the Works Council would be outlawed, and there will be something we will have to do about it, either join one or the other union or join no union at all, but there won't be no Works Council meeting, so for that reason he wanted us there to see what we thought would be best to do.

1979

Q. After he made that statement, was there a general discussion among the men?

A. Yes, sir.

Q. What was the nature of the discussion?

A. Well, I couldn't just repeat the words, but I suppose some of them—

Q. Give us the substance of what the discussion was.

A. Some of them felt as though any outside organization would be all right, and the majority, to the best of my knowledge, felt that we should start a union of our own because we know our problems that are in the plant.

Q. Was there any discussion as to whether or not a union of your own could be organized under the law?

A. I don't recall, not at that meeting.

Q. Now, did anyone representing the Falk management appear at that meeting of the 12th?

A. I believe Mr. Harold Falk was called in there to that meeting.

Q. Do you know how he happened to be called in?

A. I couldn't say, no.

Q. Do you know who called him in?

A. No, sir.

Q. When you say he was called in, was there any discussion about calling in Mr. Harold Falk before he came?

A. I think there was some mention about it, about someone should give us an idea of what that little Wagner Act means, and it was decided to see Mr. Falk to see if he could give us any idea.

Q. Now, then, Mr. Falk came in after he was sent for?

A. Yes, sir.

Q. You don't know who went for him.

A. No, sir.

Q. Do you recall what the discussion was between the men and Mr. Falk after he came in?

A. Well, to the best of my knowledge he was asked what he knows about this little Wagner Act and the Severson Act, whatever you call it, and he told us that there is very little that he knows about it because he is not a lawyer, and he would go downtown, like Tuesday morning, and he will try to find out more about that for us.

Q. Well, now, at that meeting, were there any discussions between Mr. Falk and any of the men regarding a raise that you heard?

A. Yes.

Q. Who engaged in that discussion?

A. Well, there was one—there was more than one statement made on that same principle.

Q. Well, who—who do you remember asked Mr. Falk 1981 any questions, if there were any questions asked Mr. Falk?

A. I couldn't say who the party was that made the question, no.

Q. Did you hear any question put to Mr. Falk?

A. Yes, sir.

Q. What was the question?

A. Well, one of them was, "Mr. Falk, if you can move that raise that you had promised for June 1st, if you move that up to May 1st, don't you think that a lot of men would stay out of the C. I. O.?"

Another one was, "Mr. Falk, if you move that raise from June 1st to May 1st, it would make the men in this plant feel much better, and you would have more contentment."

Now, I don't know which one of the two questions he answered, but he did give an answer.

Q. What was his answer, did you hear that?

A. Something to the effect that there is no such thing as you couldn't give in once in a while more than you really should, and he thinks he could move that raise up thirty days.

Q. Now, was there anything else said at that meeting that you remember between Mr. Falk and any of the men?

A. Not to my recollection.

Q. Now, what was said about forming an independent union at that meeting by Mr. Falk?

A. By Mr. Falk?

1982 Q. Yes.

A. Nothing at all to my knowledge.

Q. What was the final action of that meeting of the 12th?

A. The final action of that meeting of the 12th was after quite a lengthy discussion, then we returned because we wanted to get more information from Mr. Falk as to the small Wagner Act, and he said he would go downtown Tuesday and "I may be able to get you more information."

So we adjourned until Tuesday afternoon.

Q. What did you want to know about the small Wagner Act?

A. Whether it would be legal to start an independent union.

Q. Well, up to the time of the close of the meeting of the 12th, you gentlemen did not know whether it would be legal or not?

A. At least I didn't.

Q. Now, then, the next day there was another meeting?

A. Yes, sir.

Q. Did you attend that meeting?

A. Yes, sir.

Q. What occurred? As a matter of fact there were two meetings.

A. Yes.

Q. On the 13th.

A. Yes.

Q. Did you attend both of those meetings?

1983 A. Yes, sir.

Q. What occurred at the first meeting?

A. The first meeting was a very short meeting because we expected an answer from Mr. Falk and Mr. Falk was not in the plant, so I believe that meeting didn't last more than half an hour and we adjourned to the best of my knowledge.

Q. Do you recall whether or not anybody representing the Falk management was at that first meeting?

A. I don't remember.

Q. Do you remember Mr. Richard Falk being at any of the meetings on the 13th?

A. No.

Q. Don't you remember whether Mr. Richard Falk was at any of those meetings?

A. He was at one meeting below the hospital, but now I don't know which meeting it was, whether it was the Monday meeting or one of the meetings on Tuesday or the Wednesday meeting, but he was at one of the meetings.

Q. You do know though that he was at one of the meetings.

A. He was at one of the meetings.

Q. Yes. Now, do you know what he said while he was at that meeting?

A. I believe he give us his version of the small Wagner Act in short words and terms.

Q. Well, do you recall what questions were asked?

1984 A. What the Wagner Act means.

Q. Do you mean the National Wagner Act or the small Wagner Act?

A. No, the small Wagner Act, the Severson Act.

Q. By that you mean the Severson—

A. Yes, sir.

Q. —bill.

A. Yes, sir.

Q. What did he say about what the small Wagner Act means?

A. He said that hereafter the Works Council would have to be abolished because under the Small Wagner Act there is no Works Council to be held on company premises.

Q. Did he say anything about forming an independent union?

A. Not to my knowledge, no, sir.

Q. Did you hear him say anything about the cost of incorporating?

A. No, sir.

Q. Did you hear him make a report that it would cost \$5 to incorporate?

A. No, sir.

Q. Did you hear him say whether or not the boys ought to incorporate or should incorporate?

A. No, sir.

Q. Well, did he say that?

A. Well, I didn't hear it.

1985 Q. Well, could you have heard him if he had said that?

A. I could have heard him if he had said it loud enough, because I was sitting on the other end of the table, but if he said it I didn't hear it because there were groups talking all over.

Q. Now, at that meeting on the 13th do you recall whether Mr. Connell came in?

A. No, sir.

Q. Do you remember him being at the meeting?

A. No, sir.

Q. You said before that that meeting lasted about half an hour?

A. Yes, sir.

Q. And then adjourned?

A. Yes, sir.

Q. What did you do during the intermission?

A. I went back to my bench.

Q. How did you happen to go to the second meeting of the 13th?

A. Well, it wasn't very long, maybe half an hour or three

quarters of an hour after I was back at my bench at work, when either Mr. Schmidt or Mr. Gauer came over to me and says "They want you right back below the hospital, Mr. Falk come back."

Q. That is what you were told?

A. That is what I was told, yes, sir.

Q. Now, when you went over there to the second meeting, were you there at the commencement of the second meeting?

A. Yes, sir.

Q. And you were there at the end of it?

A. Yes, sir.

Q. Did Mr. Falk appear at all at that second meeting?

A. No.

Q. Did you attend the meeting on the 14th?

A. Yes, sir.

Q. Was Mr. Falk at that meeting?

A. No.

Q. Now, going back to the second meeting, what occurred at the second meeting of the 13th?

A. Someone made the report that Mr. Falk had found out that it would be perfectly legal to go ahead and start forming an independent union if we so wished.

Q. Do you remember who made that report?

A. No, sir.

Q. To the meeting.

A. I do not.

Q. Now, after that report was made, then what did the meeting do about it?

A. Well, after that report was made then the question arose as to how to start that, and naturally the first thing you think of is an attorney—excuse me—there were two or three names mentioned, I don't recall either one of them, and as close as I remember, it was myself that suggested go to see Mr. Falk, if he could recommend an attorney that had experience in labor problems.

Q. Well, how was your suggestion received?

A. Very favorable.

Q. What was the action on your suggestion?

A. The action on it was that there was a committee appointed to go to see Mr. Falk, to see what he had to say about it.

Q. Who were put on that committee?

A. Mr. Greget, Mr. Adamski and myself.

Q. Well, after you were appointed, did you receive any instructions from anybody as to what you should do?

A. Just from the chairman, to go over and see Mr. Falk.

Q. Did you go?

A. Yes, sir.

Q. Now, will you tell us what occurred when you got over there? I assume that you went to the office of Mr. Falk?

A. Yes, sir, we did.

Q. Will you tell us what occurred?

A. When we got in Mr. Falk's office we told him that we have that meeting down there, and it was decided to go and see him, whether he could recommend an attorney to give us a start with the Independent Union.

1988 Q. Well, at first, Mr. Falk didn't want to answer, and well, then he says "Well, I suppose as long as you fellows come here and ask me it will be all right for me to give you my personal opinion."

Well, then, he mentioned; I believe he mentioned two names, Mr. Burke was one, and I don't recollect the other one, and after some discussion it was decided that Mr. Burke would be all right to go to see on the formation as to how to start this union, this independent union.

Q. Well, after that was decided, who decided to see Mr. Burke?

A. I couldn't say that no more, whether it was among the three of us or whether it was discussed between the four of us.

Q. When you say "between the four of you", you mean the three of you, and the fourth—

A. And Mr. Falk, yes.

Q. Well, after that discussion was had between the three of you or between the four of you, then what was done?

A. Mr. Falk was requested to get in touch with Mr. Burke.

Q. Who made the request, if you recall?

A. I don't remember, it was one of the three of us, either Mr. Leslie Greget or Mr. Adamski or myself, one of the three of us asked him.

Q. What did Mr. Falk do?

1989 A. Well, Mr. Connell was in the office—he came in later, and he says "I will get him for you." So Mr. Connell took the phone—excuse me—and he got Mr. Burke on the wire.

Q. Let me ask you this: Do you know the phone arrangement in the Falk Corporation?

A. What do you mean by that?

Q. Well, in order to get a person you have got to go through the switch that is there, the switchboard out in the office.

A. Yes, sir.

Q. Then did Mr. Connell ask the girl to get Mr. Burke on the phone?

A. No, he just asked for an outside line.

Q. Did he give the number of the phone, do you recall?

A. I wouldn't say, I couldn't recall.

Q. But at any rate Mr. Connell got Mr. Burke on the phone.

A. Yes, sir.

Q. Then what happened?

A. After Mr. Burke was on the phone then Mr. Harold took the receiver and he done the talking.

Q. What did Mr. Falk say?

A. He said who he was, and it seemed to me as though the party on the other end couldn't remember who Mr. Harold Falk was, because he had to repeat his name about three or four times before it must have came to him who this Mr. Falk was, and then he said "Well, I have a committee here of three that want to see you on giving them advice as to how to form an independent union."

And he says "Well, they want to know when it would be best to see you or whether you could come down and see them."

And then after some talk back and forth, it was decided we go down there Wednesday morning at 10 o'clock, to see Mr. Burke at his office.

Q. Was that decided while Mr. Falk still had the phone in his hand?

A. Yes; at one time he held his hand over the mouthpiece and then he talked with us, whether 10 o'clock in the morning would be O. K. with us, and we told him it would.

Q. When you left there, was there any discussion as you walked out?

A. There may have been some words said, I don't remember.

Q. Then after that conference, at Mr. Falk's office, what did you three men do?

A. We went back below the hospital and give our report to the rest of the men that were waiting for us.

Q. Who made the report to the rest of the men?

A. I don't remember.

Q. One of the three did the talking?

A. One of the three of us, yes, sir.

Q. After that report was given, were the men told that an appointment had been made with Mr. Burke?

1991 A. Yes, sir.

Q. For 10 o'clock the next morning?

A. Yes, sir.

Q. Then did the men select additional men besides the three of you to go down?

A. There were men selected, more selected than the three of us, yes, but I don't remember how many were selected at that meeting, but when we were down at the lawyer's office, there were ten of us.

Q. And among those ten were the three of you who were this committee who called on Mr. Falk?

A. Yes, sir.

Q. And seven others.

A. Yes, sir.

Q. What was done at the meeting—the second meeting of the 13th—besides arrange for a group to go down and see Mr. Burke at 10 o'clock on Wednesday?

A. Well, after we knew that we had to go down to see Mr. Burke, naturally when you go to see a lawyer you have to have money, so we started a collection and we collected \$17 to take along down to Mr. Burke.

Trial Examiner Batten: You say "naturally"—don't put this in the record.

(Discussion outside the record.)

Q. (By Mr. Engelhard.) Now, John, how much
1992 money was collected?

A. \$17.

Q. Was that because there were 17 men there?

A. No, I believe there was one man there that did not contribute; I don't know why; some of the men didn't have any money with them and somebody else paid a dollar out for them, but I believe there was one man that did not contribute at all.

Q. You don't know who he was?

A. No, sir.

Q. Was Mr. Landry there?

A. Yes, sir.

Q. Did he contribute his dollar?

A. I think he did, because he even went down to the lawyer with us.

Q. Now, that is in substance what occurred at that second meeting?

A. Yes, sir.

Q. That you testified to?

A. Yes, sir, shortly after that we adjourned.

Q. And the next morning the ten of you went down to Mr. Burke's office?

A. Yes, sir.

Q. Tell us in substance what occurred at Mr. Burke's office.

A. Well, when we got down to Mr. Burke's office we told him who we were, what we—where we came from, and that the arrangement that Mr. Falk had made for us over the phone and he says "All right, be seated."

Then he took our names, we each signed our name on a slip of paper, and I believe Mr. Clark read off parts of the Severson Act, and give us a little explanation, and then he asked us what we wanted to form, an association or a union, or whatever we wanted to call it.

It was decided we would form an association to the best of my knowledge; I don't think there was any mention about a corporation at that time, and that to the best of my knowledge it was to be an association by the name of Independent Union of Falk Corporation Employees.

There was nothing mentioned about incorporating to my knowledge, unless it slipped my mind.

Q. If there was, you don't remember it?

A. It has slipped my mind.

Q. Go ahead, and give us the best of your knowledge, that is all we are asking you for.

A. Well, while Mr. Clark read some of those articles, somebody said "Excuse me for a minute, we want to know what this advice will cost us, because after all we are here and we have to pay for it if there is any charge to it".

Q. (By Trial Examiner Batten.) Just a minute, you are relating a conversation in the lawyer's office.

1994 A. Yes, sir.

Q. What happened.

A. Yes, sir.

Q. How did you happen to think to say that nothing was said about a corporation? If nothing was said, why did you relate it in your conversation?

A. I have heard the testimony of the man ahead of me on the stand.

Trial Examiner Batten: I see.

Q. (By Mr. Engelhard.) You say so far as you know nothing was said about a corporation?

A. Not to my knowledge, not at the lawyer's office.

Q. You don't agree with all the testimony of all the other fellows?

A. I can't remember that then, no, sir.

Q. All right, go ahead.

Mr. Lamfrom: You were where you asked him how much it was going to cost.

The Witness: Oh, yes.

Then Mr. Burke says "Well, we will make it this way: If you boys are successful in starting this Independent Union I will send you a bill after everything is settled; if the bill is too big for you, cut it down to suit yourselves and present it to me and if I think it is fair, I will accept it."

"If you are not successful in organizing this independent union, my advice this day is free."

That was about all that I can remember just now. There were a lot of other things said and done, but I can't remember them all.

Q. (By Mr. Engelhard.) Well, at the time that the men were there, was there any decision made by the men as to what Mr. Burke should continue to do?

A. I think he was to go ahead to draw up the articles for an association.

Q. Was that your understanding when you left?

A. Yes, sir.

Q. And did you go back to Mr. Burke's office.

A. No, sir.

Q. You were not among the three that went back the following day?

A. No, sir.

Q. Do you know who did go back?

A. No, sir, it was news to me when I heard somebody was back in Mr. Burke's office and they had signed some papers for incorporating, that was news to me altogether.

Q. I am asking you about the day after this first meeting you were in Mr. Burke's office on the 14th.

A. Yes, sir.

Q. That was Wednesday the 14th.

A. Yes.

1996 Q. Well, after you left Mr. Burke's office, you left with the impression that Mr. Burke was to draw some papers?

A. Yes, sir.

Q. Mr. Mitschka, after you left Mr. Burke's office, there was a meeting that afternoon in the basement of the hospital.

A. Yes, sir.

Q. What was done at that meeting?

A. Well, we made the report of what we had said down at the lawyer's office, and then it was decided that we would have a general meeting the following Sunday.

Q. Well, I told the boys right away I was sorry I could not attend that meeting, because I had made a date about two weeks previous to that to go up north about 120 miles from here, and I was not at that meeting, but it was decided to have a further meeting at the North Avenue Auditorium.

Q. Do you know what decision was made at that meeting about getting up applications?

A. At which meeting?

Q. Of the 14th, was there a decision made as respects applications? Or, was that matter taken up at some other place?

A. No, some of it was taken care of right at that meeting. I do not recall who was to go out and have the applications printed, but whoever the party was said right away "That is an awful short notice but he will do his best", and I believe those applications were out Friday afternoon or Saturday morning.

Q. Were you still in town on Friday and Saturday?

A. Yes, sir.

Q. When did you leave to go north?

A. Saturday after dinner.

Q. You worked on Saturday morning?

A. Yes.

Q. The whole plant worked Saturday morning?

A. I believe they did.

Q. Then you did not attend the meeting of the 18th at the Auditorium?

A. No, sir.

Q. The North Avenue Auditorium.

A. No, sir.

Q. When you came back—by the way, are you a member of the Independent Union?

A. Yes, sir.

Q. Are you an officer?

A. Yes, sir, director.

Q. You are a director?

A. Yes.

Q. You don't hold any other office?

A. No, sir.

Q. Some of the directors of course are also the
1998 president, vice president and secretary-treasurer, and so forth?

A. Yes.

Q. (By Trial Examiner Batten.) Let me ask you a question: Can any member of this Independent Union be an officer unless they are a director?

A. No, sir, you have to be a director to be elected an officer of the organization.

Mr. Engelhard: Mr. Trial Examiner, of course, that is the law of this state, that a corporation, the officers are elected by the directors; the stockholders are not allowed to elect the officers.

Mr. Lamford: But a stockholder may be an officer without being a director, except president. The president must be a director. That is the statutory law of the state.

Q. (By Mr. Engelhard.) Now, when did you join the Independent Union?

A. I couldn't say the date; my application card would show the date on it.

Q. Was it before you went up north or after you came back from the trip?

A. I don't remember.

Q. At any rate you joined—let me ask you this question: Did you join before it was a corporation, I mean you signed the application blank before there was a corporation?

A. I don't remember.

1999 Q. Did you come back in time to go to work on the following Monday?

A. Yes, sir.

Q. The 19th?

A. Yes, sir, I come back Sunday evening.

Q. Now, when did you find out that Mr. Wilson, Mr. Trost and Mr. Carl Menz had signed the articles of incorporation?

A. Some time during the following week, I could not say what date.

Q. Did you attend the meeting—was it the 24th?

A. Yes, sir.

Q. At that meeting the corporation was organized?

A. Yes, sir.

Q. You adopted by-laws at that meeting?

- A. I couldn't remember that now.
- Q. Well, the directors were elected?
- A. The directors were elected, yes, sir.
- Q. And the board of directors elected the officers?
- A. After the regular meeting, yes.
- Q. And the Independent Union has had meetings every month.
- A. Yes, sir.
- Q. Several regular monthly meetings.
- A. Yes, sir.
- Q. That is, the members of the union.
- A. Yes, sir.
- 000 Q. The board of directors have their special meetings at times.
- A. The board of directors has their special meeting, after every monthly meeting, right following the meeting, and they can also have special meetings at the request of some of the directors; I don't remember how many it takes to call a board of directors meeting.
- Q. Well, you don't carry around in your mind the by-laws?
- A. No, sir.
- Q. Have you ever read the articles of incorporation?
- A. No, sir.
- Q. Now, during the time that these meetings were held in the basement—
- A. Pardon me, during what, the time of what?
- Q. During the time that these meetings were held.
- A. What meeting?
- Q. In the basement of the hospital.
- A. Yes.
- Q. And at which you attended;—you were paid?
- A. Yes, sir.
- Q. You were paid for the time that you attended?
- A. Yes, sir.
- Q. And later on that was deducted out of your check?
- A. It was.
- Q. So far as you know that was done to every man.
- 2001 who attended these meetings?
- A. Yes, sir.
- Q. John, who was the guiding light, if there was such, if I could use that expression, in promoting the organization of the Independent Union?
- A. Well, I think that credit would have to be given to John Brever because he called—that first meeting Monday afternoon.

Q. During the time that you attended these meetings and the other meetings when you were conferring with these men, were you ever influenced in your activities in connection with the organization of the Independent Union by anything that Mr. Falk said?

A. No, sir.

Mr. Rissman: I object to the question, it calls for an opinion of this witness whether there was influence or not. We have the facts and the Board and the Examiner can decide whether there was influence.

Trial Examiner Batten: Well, I think the Examiner can judge from the facts; however, I see no objection if he has an opinion, I don't know how much weight—

Mr. Engelhard: I did not ask for an opinion.

Mr. Rissman: The question calls for an opinion.

Trial Examiner Batten. Let's have the question read, please.

(The question and answer were read.)

2002 Trial Examiner Batten: I see no objection to the answer, for whatever it may be worth. The facts are here, the conversation.

Q. (By Mr. Engelhard.) Now, John, in joining the Independent Union was that your free choice or were you influenced by any person?

A. It was my own free choice.

Q. Why did you join the Independent Union and not the C. I. O.?

A. Well, why I should join—why should I join the C. I. O.? The C. I. O. and the American Federation of Labor was sort of bucking one another, and I didn't know which one to join if I wanted to join an outside organization, and I felt if we could start something in the plant, knowing all this, well, that we would get better results than if we have some union from the outside come in and tell us what to do.

Q. (By Trial Examiner Batten.) Were you ever solicited to join a union before you joined the Independent Union?

A. Some years ago.

Q. How many years are you a pattern maker?

A. 26.

Q. How many times during that 26 years have you been solicited to join a labor organization?

A. About twice.

Q. Did you ever join one up to this time?

A. Yes, I belonged to a labor organization when I first came to Milwaukee; that was my first step; I went to the business agent at that time and I told him I was from Cook County, and I joined the union and got a job at Milwaukee.

Q. What kind of organization was that?

A. Pattern maker's union.

Q. (By Mr. Engelhard.) Was that an A. F. of L. union?

A. Yes, sir.

Q. Did you join?

A. Yes, sir.

Q. How long were you a member of that?

A. I believe only a few months. When I first joined that organization I was sent to Allis Chalmers to look for a job, and the business agent at that time told me "If the boss asks you if you belong to this organization, you don't have to tell him."

I didn't like that idea, because if I want to belong to any organization I ain't afraid to tell anybody; so I guess that was the first start I had against outside organizations.

Q. (By Trial Examiner Batten.) Did you go to work out at Allis-Chalmers?

A. No, I didn't go to work at Allis-Chalmers; I landed a job at Nordberg, I worked eleven months and three weeks.

Mr. Lamfrom: Was it clear to the Examiner whether the witness had testified that the C. I. O. had solicited him?

Mr. Engelhard: Well, I will ask a question.

2004 Q. (By Mr. Engelhard.) John, did the C. I. O. solicit you at any time?

A. No, sir.

Q. Before or after you joined the Independent?

A. No, sir.

Q. (By Trial Examiner Batten.) Did the A. F. of L. solicit you out here at the Falk plant?

A. At the Falk plant?

Q. At the Falk plant, I mean in the last year.

A. No, sir.

Q. Then as a matter of fact you didn't have much of a choice, did you?

A. Well, I couldn't—

Q. I mean nobody actually asked you to join?

A. No, nobody asked me to join?

Q. (By Mr. Engelhard.) During the month of April you had a choice of joining the C. I. O.

A. Yes, I suppose so.

Q. You knew the C. I. O. was active in the plant.

A. Yes, sir.

Q. You knew that some of the men had joined the C. I. O., didn't you?

A. I have heard of it, yes.

Q. I mean it was rumored around the plant.

A. Yes, sir, that they were very active at the plant, I 2005 suppose Shop 3.

Q. Mr. Mitsche, it was testified to by Mr. Neal that at the meeting at which Mr. Falk was present "He had promised to bring us information as to how to start this Independent Union."

Did you hear Mr. Falk make any such statement at that meeting, that he was going to bring information as to how to start a union?

A. No, sir.

Q. What information did he promise to bring?

A. He only promised to bring us information regarding the Severson Act, whether an independent union would be within the law.

Q. To your knowledge was anything said by him, that he was going to tell you fellows how to start a union?

A. No, sir.

Trial Examiner Batten: Did Mr. Neal testify that Mr. Falk told him how to start the union?

Mr. Engelhard: He say "He had promised to bring us information as to how to start this independent union". That is his testimony.

The Witness: Mr. Engelhard keeps moving.

Trial Examiner Batten: Mr. Engelhard, the witness says you are moving over, and he can't see you. Won't you either get closer—

2006 Mr. Engelhard: Yes, I think if Mr. Rissman and I slept in the same bed we would be very comfortable.

The witness: It would have to be a big bed.

Trial Examiner Batten: I don't know, I made a statement like that once, and I was mistaken.

Q. (By Mr. Engelhard.) Did you at the meeting at which Mr. Falk was present hear him make any remark—

A. Which Mr. Falk?

Q. Mr. Harold Falk. The testimony of Mr. Neal is as follows:

"Well, he said we would have to incorporate, and that we would have to do it as quick as possible because the C. I. O. were working in the plant."

Did you hear Mr. Harold Falk make any such statement at the meeting of the 12th?

A. I don't remember hearing such a statement.

Q. Would you have heard such a statement if it had been made?

A. I could have heard it.

Q. I asked you if you would have heard it if it had been made.

A. Well, if he didn't say it loud enough I couldn't have heard it because I was away to the other end of the table; there were two tables pushed together, each one about 16 feet long, and we were sitting along that—we were sitting around that long table.

Trial Examiner Batten: Mr. Engelhard, I was just wondering if you have any objection to adjourning now and starting at 1:30, rather than to continue until 12:30 and reconvene at 2 o'clock.

Mr. Engelhard: No, I don't have any objection.

Trial Examiner Batten: Then we will adjourn now.

Mr. Engelhard: I will say this, I am almost finished and if Mr. Rissman could finish his cross examination by half past 12 then Mr. Hirschka would not lose the afternoon.

Mr. Rissman: I could finish the cross examination in two minutes after the direct is through.

Trial Examiner Batten: This does not have to be in the record.

(Discussion outside the record.)

Mr. Engelhard: I think I will be through in just a minute.

Mr. Rissman: Yes.

Mr. Engelhard: As a matter of fact, I think I will rest with him right now.

Mr. Rissman: No cross examination.

(Witness excused.)

Trial Examiner Batten: Then we can adjourn until 1:30.

(Thereupon, at 12 o'clock Noon, an adjournment was taken until 1:30 o'clock P. M. of the same day.)

2008 After Recess:

(Whereupon, the hearing was resumed, pursuant to recess, at 1:30 o'clock P. M.)

Trial Examiner Batten: Are we ready to proceed?

Mr. Engelhard: I will call Mr. Connell.

EDWARD P. CONNELL, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Engelhard.) What is your full name?

A. Edward P. Connell.

Q. Are you an officer of the Falk Corporation?

A. Yes, vice president.

Q. How long have you been such officer?

A. Well, six years.

Q. How long have you been connected with the Falk Corporation?

A. 24 years.

Q. How did you start?

A. As an order clerk.

Q. And you advanced as the years went by?

A. That is right.

Q. What was your first office?

A. Will you repeat that?

Q. What was your first office that you held with the 2009 company?

A. Purchasing agent.

Q. And after you had advanced to purchasing agent, how long were you such purchasing agent?

A. Until 1934, when I took over the accounting as comptroller.

Q. Then you were comptroller?

A. Yes, sir.

Q. Then the next step was the vice presidency?

A. Yes, that is right.

Q. Now, Mr. Connell, did you attend any meeting of the employees of the Falk Corporation held in the basement of the hospital?

A. Yes, I did, one noon I was called over there.

Q. Do you know the date of that meeting?

A. It is not definitely clear in my mind; it was in April.

Q. Do you know whether it was the 12th or 13th?

A. About that time I would say.

Q. Do you know whether it was on Monday, the 12th, or on Tuesday the 13th?

A. This may not be accurate, but I think it was Tuesday, for the reason that Mr. Harold Falk was not there, and usually he is away on Tuesdays, so I think that would be the correct answer.

Q. How did you happen to go to that meeting?

2010 A. Well, I was told by Dick Falk that there was a considerable assemblage over there in the basement of the hospital waiting for some advice as to how to proceed about—it was rumored that they were planning to form an independent union, and he asked me to come over and talk to them.

Q. Did you in response to Richard Falk's invitation or rather his notice that the boys wanted to see you, go there?

A. Yes, I did.

Q. What did you say after you got there?

A. I told them that as nearly as I could interpret the provisions of the Wagner Act, that we had absolutely nothing that we could do for them; that we were not permitted to contribute any way financially, or even in an advisory capacity, and after a short time the meeting was dispersed.

Q. Do you remember any particular questions that any of the men there asked you?

A. Well, it was over in a very brief time, and I have stated in substance what transpired.

Q. Now, then, were you present on the 23rd of April when three organizers of the Independent Union came in and conferred with Mr. Harold Falk and yourself?

A. I was.

Q. Can you tell us what transpired at that meeting in substance?

A. As I recall, Mr. Wilson, Mr. Trost and Mr. Menz
2011 came into the office, and they came in as representatives of the Independent Union with the claim that they had for membership more than a majority of the employees of the plant, and they wanted the right to act as sole bargaining agent.

Q. You say they made that claim.

A. They made that claim.

Q. Who responded to their statement that they had a majority of the employees—

A. I didn't understand you.

Q. I say, who responded to them, who spoke to them?

A. Mr. Herman Falk.

Q. What was said?

A. He says, "Well, if you have a majority of members, we will have to recognize you as sole bargaining agent according to the interpretation of the Wagner Act".

Q. Do you know whether he gave the men anything in writing at that time?

A. Yes, he did, he gave them a letter recognizing them.

Q. Who wrote up the writing that he gave the men, if you know?

A. What is that?

Q. Who wrote up the writing that Mr. Falk gave the men?

A. I don't understand your question exactly.

Q. Well, who dictated the statement that was given to the men?

2012. A. It was dictated after consultation with, I think, Mr. Lamfrom, if I am not mistaken.

Trial Examiner Batten: Exhibit 21 I think, Mr. Engelhard.

Mr. Engelhard: Yes, Exhibit 21.

The Witness: I dictated it and then read it over to Mr. Lamfrom to see if we were doing anything we shouldn't do. That is my dictation.

Q. (By Mr. Engelhard.) You dictated it?

A. Yes, sir.

Q. It is signed by Mr. Herman Falk?

A. Yes, sir.

Q. And the original of this was given to the men.

A. That is right.

Q. Now, were you present at the meeting held on—held at Mr. Harold Falk's office, at which the committee of three men appeared?

A. You mean Mr. Mitschka—

Q. Mitschka, Adamski and Les Greget.

A. Les Greget, yes, I was there.

Q. Did you overhear a conversation which took place between them and Mr. Falk?

A. Yes.

Q. Did you join in the conversation?

A. In a small way, yes.

2013 Q. Will you tell us the substance of what occurred at that conference.

A. They stated they wanted to form an independent union and they wanted advice as to whom to select as an attorney to steer them correctly, and Mr. Falk mentioned the names of Mr. Burke and another attorney, Mr. Fish, and they wanted—they asked if he could arrange for an appointment, and he says "Well, I don't suppose there is anything wrong about that."

So he says, "Yes, we will phone to Mr. Burke and make an appointment," and as I recall it I was standing to his right nearest the telephone and I took the receiver off the hook and asked for Mr. Burke and when he was on the line I turned the receiver over to Mr. Falk.

Q. Did you hear the conversation that Mr. Falk conducted with Mr. Burke?

A. I heard his end of it.

Q. Well, will you tell us the substance of his—what the substance of his end was?

A. It was arranging for an appointment, as I recall the appointment was made for the next day at ten o'clock.

Q. Was there any further conversation held there that you remember?

A. No, that practically closed the meeting as I recall it. Mr. Engelhard: That is all.

2014

Cross-Examination.

Q. (By Mr. Rissman.) Mr. Connell, directing your attention to the meeting of April 23rd, when Mr. Wilson, Mr. Trost and Mr. Menz were in the office, did they indicate how many members they had in their Independent Union?

A. They said a majority.

Q. They didn't indicate any number?

A. No, they did not.

Q. Did they submit any proof of the majority?

A. No, and I made statement to them that their statement that they have a majority will no doubt be challenged and they had better be sure they were right.

Q. Challenged by whom?

A. Well, I assumed later it would be challenged by the I. O. or some other agency.

Q. Did you or Mr. Herman Falk request any proof?

A. We had an affidavit from them to the effect that they

did represent a majority, and having long association with the gentlemen we were very much inclined to believe them.

Q. Do you still have that affidavit?

A. It is on record, yes, sir.

Q. Could it be brought in?

A. Wait a minute.

Q. Pardon?

A. Was an affidavit submitted? Yes, it must be in 2015 the records.

Q. (By Mr. Engelhard.) Let me ask a question: Was that affidavit submitted at the time, Mr. Connell, or was the affidavit submitted—

A. Later; it wasn't submitted on that date.

Q. (By Mr. Rissman.) Directing your attention to this one date—

A. Yes, sir?

Q. —was there any proof submitted?

A. No.

Q. Was there any request for proof on the part of the company?

A. No, there was none except we took their word, and as I told you before, we said they had better be sure they were right because no doubt they would be challenged.

Q. Did you or Mr. Herman Falk suggest that the employees should have a vote or election to determine whether or not they chose this Independent Union?

A. No, we did not.

Mr. Rissman: That is all.

Redirect Examination.

Q. (By Mr. Lamfrom.) What led you to believe, Mr. Connell, the statement that these men made to you on that date, that they had a majority?

A. During that period there was a tremendous amount of activity, agitation for unions of one type or another, and very frequently my work takes me into the shop, as it does Mr. Herman Falk and Mr. Harold Falk, and we contacted a considerable number of people; I mean, you get the sentiment from the number of people who talked favorably for the Independent Union.

Q. At the time you dictated this letter recognizing the Independent Union as sole bargaining agent was it your ba-

est belief that that representation of a majority, if they claimed it, was the fact?

A. Yes.

Q. And both you and Mr. Falk agreed on that.

A. Yes.

Q. Had you any reason to believe that there was any misrepresentation on the part of this committee as to the fact that they represented a majority?

A. None whatever.

Q. Or did you have any idea that in representing—in stating that they represented a majority, that they were mistaken?

A. No, I had no such idea.

Q. What was your feeling as to your obligation under the law as it existed at that time, as to whether or not you must recognize the majority if it is a majority?

A. We had—we understood we had no choice but to accept them as the sole bargaining rights if they represented a majority.

Q. Was it your position at that time that you would recognize as the bargaining agent for the employees of The Falk Corporation, any labor organization as defined in the Wagner Law that had a majority of its employees in its membership, as the bargaining agent for the employees?

A. We would have no choice but that.

Mr. Engelhard: May I ask one question?

Q. (By Mr. Engelhard.) Mr. Connell, in the years you acted as purchasing agent or in other capacities, did you get to know Mr. Wilson?

A. Yes.

Q. Personally?

A. Yes, I did.

Q. For how many years had you known Mr. Wilson?

A. I can't state except—yes, I can state 15 years.

Q. How many years had you known Mr. Trost?

A. For I think a longer period than that.

Q. How many years had you known Mr. Menz?

A. Mr. Menz is a relatively new employee.

Q. Did you have any—

A. I mean relatively when you figure 15 or 20 years, he is relatively new.

Q. Did you have any reason to disbelieve either one of those men when they made the representation?

A. No.

Q. You had always found these men to be truthful?

A. Yes indeed.

Mr. Engelhard: That is all.

Mr. Rissman: That is all.

Q. (By Trial Examiner Batten.) Mr. Connell, how many employees did you have on April 23, do you know, or have you any idea?

A. I can very closely—

Mr. Lamfrom: May I say to you, Mr. Examiner, we intend to show that from the party that has the figures. Well, if he has any knowledge—

Q. (By Trial Examiner Batten.) Well, at this conference, did any of the committee make any statements with regard to the number of members they had?

A. Why, mention was made—I am certain, it wasn't at this meeting—

Q. Well, before the meeting, did any of these men ever mention the number of members they had?

A. I think at one time I heard Dick Falk say they had about seven or eight hundred, and they were getting members daily.

Q. I presume daily during this time when you were going out around the shop it was very noticeable that there 2019 was quite a tension, and so forth, in the plant during the period, was there not?

A. I think the efficiency of the plant dropped at least 20 per cent.

Q. I presume that both organizations were putting on a sort of membership drive, weren't they, so that during that period I presume most of your employees were more interested in the organization of one or another of these unions than most anything else, weren't they?

A. Yes, I am sorry to say that was true.

Trial Examiner Batten: That is all.

Mr. Engelhard: That is all, Mr. Connell.

Mr. Clark: I have no questions.

Trial Examiner Batten: Pardon me, Mr. Clark. I thought this morning in accordance with our discussion that you were going to proceed when they had finished.

Mr. Clark: Yes.

Trial Examiner Batten: That is all, then, Mr. Connell. (Witness excused.)

Mr. Engelhard: Mr. Green, will you take the stand, please.

HARRY GREEN was recalled as a witness by and on behalf of the Respondent, and being previously duly sworn, was examined and further testified as follows:

2020

Direct Examination.

Q. (By Mr. Engelhard) Mr. Green, there was testimony offered here to the effect that you removed Mr. Rasey—

A. Mr. Rasey?

Q. Mr. Rasey, from the job that he had and put him with Mr. Trost.

A. Yes.

Q. Do you recall that occasion?

A. Yes.

Q. Will you tell us why you removed Mr. Rasey from the job he had and put him with Mr. Trost?

A. Because he was going around with organization cards for the C. I. O. and I met him and I told him that he should not do it, so I demoted him, I took him off the job he was on and put him on the floor with Mr. Trost.

Q. Did you have any particular reason for putting him in company with Mr. Trost?

A. No, no reason whatever for putting him with Mr. Trost, except that was a place where I could put him.

Q. What type of work was he doing when he worked with Mr. Trost?

A. It was a kind of assembly work.

Q. Do you remember having a conversation with Mr. Landry about a raise, with regard to a man by the name of Sharparki?

2021 A. What name?

Q. Sharparki.

A. I don't remember that name at all.

Q. Is that the man they called "Sausage"? Walshulski, do you know a man by that name, Leo?

A. What machine does he run? Oh, Leo you mean?

Q. Do you remember having a conversation with Mr. Landry about that man about a raise, a request?

A. About a year ago I think that was.

Q. Have you refreshed your memory on that?

A. Yes. Mr. Landry did speak to me; that was about a year ago, as I remember, if I remember rightly.

Q. Do you remember what Mr. Landry said, and what you said on that occasion?

A. As I remember it now Mr. Landry said that man was worth more money and I differed with him, because that man had been caught sleeping when he was working on the second shift, and he was put to work, as he stated to me, and that was why I refused the raise.

The night foreman had complained about him sleeping, he had to wake him up two or three times, and that was why I refused him.

Q. When you were talking to Mr. Landry about it, did you or he use a little profanity?

A. Oh, yes, we always do.

2022 Q. In other words, in discussing matters profanity creeps in, whether it is in good fellowship or not—

A. Absolutely.

Q. (By Trial Examiner Batten) That does not mean anything as to whether you are friends or enemies.

A. No.

Q. (By Mr. Engelhard) You call each other names with a smile on your face?

A. Certainly.

Q. Would you say Mr. Landry was correct when he says that after you and he talked about it, you said "Well, I don't give a damn what you call it", and you walked away?

A. Possibly I did say that.

Q. The net result of the argument was that Mr. Landry still believed what he thought was right and you believed what you thought was right?

A. Certainly.

Q. You have had numerous arguments with Mr. Landry, haven't you?

A. Yes, sir.

Q. Not only this year, but in prior years.

A. Four years.

Q. Have there ever been any hard feelings between you?

A. No.

Q. And there isn't any hard feeling now?

2023 A. No.

Q. As a matter of fact you rather like an argument, don't you, Mr. Green?

A. With him, yes.

Q. He has a good come-back, hasn't he?

A. Sometimes.

Q. (By Trial Examiner Batten) I don't suppose you and he ever talk during working hours, do you?

A. Oh, yes.

Q. (By Mr. Engelhard) Well, I assume, Mr. Green, that in your work as superintendent there are times when you and the men talk but there is a limit to it.

A. Well, there is really no limit to it except I get mad and leave them.

Q. That is the limit.

Mr. Rissman: That is the advantage of being a superintendent.

Q. (By Mr. Engelhard) What I mean is, it is not a daily occurrence?

A. Oh, yes, there is always some man that has a grievance of some kind, or something like that, and I have to try and satisfy that man to the best of my ability, to get rid of his grievance, whatever it is.

Q. At present you have how many men in the three units over which you are superintendent?

024 A. There are somewhere around 630 and 640, somewhere right around that, day and night.

Q. Day and night. Are you also superintendent over those men at night?

A. Well, a man by the name of Seal is superintendent, but he is under my jurisdiction.

Q. You are responsible for the production in those three departments.

A. Yes.

Q. You mentioned yesterday I believe, Shop No. 1, Shop No. 2 and Shop No. 3.

A. Yes, sir.

Q. But at night you are not necessarily there.

A. Not all the time. Sometimes I go down and check up and see that things are all right, or get there early in the morning.

Q. You get reports of what is going on in those three units?

A. Yes, sir.

Q. From time to time.

A. Yes, sir.

Q. And in the course of your duties as superintendent you have got to check up the individual men or you check up the foremen to see that the men are checked up.

A. Yes.

025 Mr. Engelhard: Mr. Examiner, this may be a part of the record.

It is our intention to check over some of these transcripts that we have not had a chance to check over, and if there is any further testimony that I want from Mr. Green I will call him again, that is, he may be called tomorrow. It is just a question of what we find tonight by going over the transcripts, but it is impossible to check over almost a fifteen hundred page transcript to see whether there is anything else or not.

Trial Examiner Batten: Well, I assume, Mr. Engelhard, that up to the time that the record is closed there is no objection on anybody's part to your calling anybody you feel is necessary.

Mr. Engelhard: Well, I feel I would be wasting a lot of time if I now—

Trial Examiner Batten: I say, as far as the Examiner is concerned, up to the time the record is closed at the close of the hearing, why, you may feel free to do what you consider necessary for the proper interests of your client.

Mr. Engelhard: The reason I make this statement is, I think at the time Mr. Green was put on adversely, Mr. Hydar and some others, we reserved the right to cross-examine.

Trial Examiner Batten: That is right.

Mr. Engelhard: And put them back on the stand.
2026 Now, we do not want to give the Examiner and counsel the impression that we necessarily expect to put any of these men back unless we find it necessary, in checking up some of the details, because I think Mr. Rissman took all of these men pretty nearly over everything when he examined them.

Trial Examiner Batten: Well, we will understand it that way, in case you so desire.

Mr. Engelhard: That we would unnecessarily prolong this hearing if we went over the same story again.

Trial Examiner Batten: Yes.

Mr. Engelhard: That will be all for the present, Mr. Green. We will not call you any more this afternoon, so if you want to go back to the plant and take care of your duties you may do so.

Mr. Rissman: No questions.

Trial Examiner Batten: Did you punch a card when you left, Mr. Green, or you don't have to punch it?

(Witness excused.)

Mr. Engelhard: Mr. Richard Falk.

May we have a few minutes, Mr. Examiner?

Trial Examiner Batten: Yes, how long?

Mr. Engelhard: Just a few minutes.

Trial Examiner Batten: Five or ten minutes?

Mr. Engelhard: Oh, I would say about five minutes.

Trial Examiner Batten: Well, we will recess for ten
2027 minutes.

Mr. Engelhard: All right.

(A short recess was taken.)

Trial Examiner Batten: I believe we are ready to proceed.

Mr. Engelhard: Strike out Mr. Richard Falk as being the next witness, and I will call Mr. Buuck.

HELMUTH OSCAR FREDERIC BUUCK, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Engelhard) What is your full name?

A. Helmuth Oscar—shall I use the other one—Frederic Buuck.

Q. I assume you are German, Mr. Buuck.

A. What is that?

Q. I assume you are of German extraction.

A. Yes, sir; a major in the army asked me that question. I am not ashamed of it.

Q. Are you an ex-soldier?

A. Yes, sir.

Q. I mean you were in the army.

A. Yes, sir.

Q. How old a man are you?

A. 42 years.

2028 Q. Are you a superintendent at the Falk Corporation?

A. I am night superintendent at the Falk Corporation, yes, sir.

Q. In what department?

A. In the foundry.

Q. How long have you been employed? Are you a little hard of hearing?

A. In one ear, yes.

Q. Can you hear me all right?

A. Surely.

Mr. Engelhard: Will the reporter read the last question please.

(The question was read as follows:

“Q. How long have you been employed?”)

Q. (By Mr. Engelhard) By the Falk Corporation:

A. Off and on for 26 years.

Q. How old were you when you started?

A. Just a kid.

Q. You learned the trade at the Falk Corporation?

A. No, I was just a roustabout, did clerking, did helping; well, I just monkeyed at the places I thought I could be of use.

Q. I presume you became foreman at some time.

A. Yes, sir.

Q. And now you are superintendent.

A. Yes, sir.

2029 Q. How many years have you been superintendent?

A. I have been superintendent, or night superintendent since I have been 19 years of age.

Q. Since you were 19 years of age?

A. Yes, sir.

Q. Except for the time you were in the army?

A. Yes, sir.

Q. How long were you in the army?

A. Oh, I don't know, a very short period. They didn't want me, I was under deferred classification, and I quit because there were so many people asking me about getting jobs, they were trying to avoid getting into the army, and I quit my job and joined the army all of my friends were doing it, so did I.

Q. Now, Mr. Buuck, Mr. Neal testified that on the 23rd of April he had a conversation with you. Do you recall having a conversation with Mr. Neal about that time?

A. I have had lots of conversations with Mr. Neal, yes, sir.

Q. I mean, do you recall having a conversation with him at about that time, the 23rd of April? I mean Mr. William Neal.

A. William Neal, Bill Neal, yes.

Q. Yes, Bill Neal.

A. Yes, Bill Neal.

2030 Q. He is in your department?

A. Yes, sir.

Q. He is a night man?

A. Yes, sir.

Q. He is a truck driver, isn't he?

A. Well, he is a handy man; he is a man I use for chain-
ing, I use him for truck driving; he is used wherever it be-
comes necessary to use a man of his type.

Q. Do you remember a conversation he had with you re-
garding whether or not any work would be done on a Satur-
day, the 24th of—

A. Yes, sir, I did have.

Q. Will you tell us what he said and what you said?

A. He said he was appointed by the boys and he would
like to know what we were going to do, the boys would like
to know if we were going to work on this Saturday.

That was the sum and substance of the conversation. And
at the time if I remembr correctly I was slightly irritated,
which I do get at times and the boys know it, and I may have
asked him at that time, "Now, who in the hell do you repre-
sent?" Just like that.

Q. What did he say to that?

A. Well, he says—he got very snooty, and told me that
as far as he was concerned, I would not listen to him at any
time anyway, so what's the use, and he shrugged his
2031 shoulders, and that was all that was said at that time.

Q. Now, do you recall a conversation with William
Neal in which you were supposed to have said, "I feel sorry
for you".

A. Yes, sir.

Q. Will you state just what the occasion was?

A. Well, this William Neal came back after a meeting.
one evening, he came walking into the shop in what I consid-
ered was an obstreperous manner there, he came through and
passed me up, passed the foreman up, passed my side-kick,
Mr. Cain, up, and he went to various of the men and gave
them some paraphernalia, and then he slowly and leisurely
walked around and I thought something was wrong with the
man, that he was either punch-drunk or something else—I
would not swear to that—and so I pulled him over to the side,
and I says, "Bill, I think you will live to be sorry for this
obstreperous conduct."

I had difficulty, I had prided myself—

Mr. Rissman: I move the last part be stricken as not re-
sponsive.

The Witness: Maybe I can clarify my statement..

Trial Examiner Batten: Well, I don't know as it will do any harm there if it stays in.

The Witness: I don't want to do any ~~ffian~~ any harm.

Trial Examiner Batten: I mean your statement, not the man.

2032 The Witness: I like him.

Q. (By Mr. Engelhard) Did you ever make this statement to Mr. Neal:

"Louis Meindle, Steve Fodi and yourself, I just feel sorry for you."

A. No, sir; I did not make that statement. I made a statement to Mr. Neal—he made this statement to me after he went home that evening—you understand, I prevailed upon him to go, and when he came back that evening, then I took him to the corner and he had a very confidential talk, he and I, which we had previous to this time, we had many talks, and I told him that I thought with his acts and chips on his shoulder, that he would live to be sorry for it, and I sincerely believed that.

Q. What did he say to that?

A. What did he say to that?

Q. Yes.

A. He told me that evening that he would amend his ways, he would be more careful of his acts.

Q. He testified that you at one time asked him to distribute some application blanks—Independent Union application blanks.

Do you recall whether you ever had any conversation with him about union blanks, Independent Union blanks, application blanks?

2033 A. I wish to state at this time I happen to be opposed to the C.I.O., that is my individual opinion, I personally am opposed to the C.I.O.

I also happen to be one of the two republicans that they were looking for after the last election, just to make myself clear, that is all.

Q. Did you talk to him about application blanks?

A. No, sir, I did not.

Q. Mr. Neal testified that on April 16th, this is his testimony:

"April 16th, I believe the day the application blanks came out.

"And what did you say to him when he asked you that?

"A. I told him I would do nothing about the formation of that union, and the application blanks."

Do you remember whether or not you ever talked to him about the Independent Union?

A. Well, I recollect previous to this time I had talked to him, yes. He had always been very emphatic in his demand, rather radical in his views. He used to leave questions hanging in the air, and let me suppose something.

He had been a Works Council man and I had talked to him previous to his entering the C.I.O.

Q. What did you say to him?

2034 A. What?

Q. What did you say to him?

A. Well, things pertaining to the shop or matters that came up, grievances he was supposed to have had, that he may have asked me about.

Q. Isn't your testimony, Mr. Buuck, that you at no time asked him to distribute any application blanks for the Independent Union?

A. I never did, no, sir.

Mr. Engelhard: That is all.

Cross-Examination.

Q. (By Mr. Rissman) In your confidential talks with Mr. William Neal, did you ever express your opposition to the C.I.O.?

A. Well, he expressed his views very freely and I expressed my views freely. That was a little chat we may have had together, often, quite often.

Mr. Rissman: That's all.

Redirect Examination.

Q. (By Mr. Engelhard) That is a common practice, wasn't it?

A. Yes, I argued that point.

Q. Did you argue other matters with Mr. Neal?

A. Yes, sir.

Q. About politics?

2035 A. Yes, sir. He happens—he professes to be of the same political faith that I am, yes, sir.

Q. (By Trial Examiner Batten) Are you in doubt?

A. Yes, very much in doubt.

Q. (By Mr. Lamfrom) In expressing your views on the C.I.O. to Mr. Neal, did you understand that you were reflect-

ing the views of the Falk Corporation or was it your own views that you expressed?

A. I believe Mr. Falk has told me rather flatfooted, called me down in the shop, I remember, and I believe Mr. Falk several times has told me I had better curb my language; in fact I was told by Mr. Falk a lot of times that maybe my views should not be expressed.

Is that what you want to ask me? That is, as I understood the question.

Q. Well, after Mr. Falk told you to curb your expressions, did you still go on expressing any views to your men regarding the C.I.O. and the Independent Union?

A. Yes, I did. I believe that is my right as an individual, as long as it didn't interfere with the men at their work. I never used that as a basis to coerce—is that what they use. I am not familiar with it?

Q. Well, coerce, intimidate and interfere.

A. I expressed the view here the other day that I thought maybe it would be a good idea for us fellows on the outside to picket the Labor Board. I don't know, is this fellow the labor—

Q. Mr. Rissman?

A. Yes, sir.

Q. Well, let me ask you, whether or not in expressing your views to the men with regard to the C.I.O. or with regard to anything else, did you or did you not feel that you were expressing the views of the corporation?

A. No, sir, I did not feel that I was expressing the views of The Falk Corporation.

Q. Did you attempt at any time in arguing with your men with reference to the C.I.O. or with reference to any union question, to reflect what you understood to be the attitude of the Falk Corporation?

A. Hell, bring it down to simpler terms, I am a foundry rat.

Q. What is that?

A. I am a foundry rat, if you please; use simpler terms.

Q. Well, did you at any time in talking about the C.I.O. or any labor organizations intend to make your men understand that you were expressing the views of the employer, the Falk Corporation?

A. No, sir, I did not. Those are my own views, and I am not ashamed of them.

Mr. Lamfrom: That is all.

Mr. Rissman: Just a minute.

37

Recross Examination.

Q. (By Mr. Rissman) Do you know the views of The Falk Corporation on the question of the C. I. O.? Or the Independent Union?

A. Well, I have been given to understand—I did not attend the meeting, but I was given to understand that we had no views, as far as we foremen, we had no views; we were just told, we were to keep our mouths shut; that our views were not wanted.

Q. Do you know the views of Mr. Harold Falk?

A. His personal views, do I know his personal views?

Q. Yes, on this subject.

A. I would not know his personal views on it, no.

Q. Did you ever hear of his personal views?

A. No, sir, I can frankly state that; I would think that I would have some thought.

Q. What do you think they would be?

Mr. Lamfrom: That is objected to. It seems to me that going rather far afield, what he thinks Mr. Falk's views are.

Trial Examiner Batten: Well, I will sustain the objection.

Mr. Rissman: That is all.

Mr. Lamfrom: That is all.

Examination by the Chair.

38 Q. (By Trial Examiner Batten) How long have you worked for The Falk Corporation?

A. 26 years.

Q. Do you know what their labor policy has been during these 26 years?

A. Yes, sir, I do.

Q. What has it been?

A. The color of the men does not make any difference—

Q. I mean with respect to labor organizations.

A. Well, I have never been told to eliminate or cross examine one for a job, in respect to labor.

Q. Well, do you know whether the corporation has any policy which—do you know whether the corporation has any policy with respect to labor unions?

A. I don't know, it hasn't been written out to me, at all me.

Q. Did you ever see or hear of a letter that was sent to the men in the power house stating that "We are opposed to a union"?

A. No, not that I recall.

Mr. Lamfrom: May I correct the Examiner? The letter sent to the power house was to the effect that "We do not favor a union."

Trial Examiner Batten: Yes.

Mr. Lamfrom: It did not say "We are opposed to a union."

2039 Q. (By Trial Examiner Batten) "We do not favor a union", you never heard of that?

A. I never saw such a letter.

Q. I didn't say whether you saw it, did you ever hear of it?

A. I have heard of it, yes.

Q. You have heard of it?

A. Yes, I have heard of it here the first time, I have never been in court of any kind—

Q. Then this is a liberal education?

A. Yes, very much so.

Trial Examiner Batten: That is all.

Mr. Lamfrom: That is all.

(Witness excused.)

Mr. Engelhard: Mr. Richard Falk.

RICHARD FALK, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Engelhard) Can you see me all right, Richard?

A. Yes.

Q. My associate here thinks I am not sitting out far enough. Mr. Falk, you are the son of Mr. Harold Falk.

A. Yes, sir.

Q. How old are you?

A. 24.

2040 Q. What training have you had, professional training?

A. Well, I graduated from the University of Arizona as a

master in economics; and did post graduate work in political science.

Q. Where did you do your post-graduate work?

A. At the University of Arizona and in Washington, D. C.

Q. Are you now connected in any capacity with the Falk Corporation?

A. Yes, sir.

Q. What is your position?

A. I am a clerk in the accounting department.

Q. How long have you been a clerk in the accounting department?

A. Since June 1st, 1937.

Q. Was that the first connection you had with the corporation?

A. No.

Q. Prior to June 1st, 1937 did you have any connection with the corporation?

A. I was a clerk in the purchasing department.

Q. And prior to that?

A. That was my first job.

Q. And when did you become a clerk in the purchasing department?

A. I think that was about April 1st, 1934.

2041 Q. So that from April 1st, 1934 to the present you have been employed by the Falk Corporation?

A. Yes, sir.

Q. Now, in connection with your work for the company have you pursued your studies in political science?

A. Yes, I have.

Q. Political economics?

A. Yes, sir.

Q. And in that connection have you had any particular interest in labor relations?

A. A very great interest.

Q. Since the beginning of this year, that is, 1937, or rather since the 19th of January, when the Severson Act was introduced in the legislature by Senator Severson, will you tell us just what you have done with regard to making a study of that Act or bill, I mean that was originally introduced.

A. Well, I was sent out by the company to Madison to follow that bill all the way through; I would sometimes spend two days at Madison and sometimes three during the week, and I was in on all the important conferences on that bill. I followed it right through to its final enactment.

Q. Did you attend the committee hearings?

A. Almost every one of importance.

Q. Was this bill heard by a joint legislative committee of both houses or heard separately by each house?

2042 A. By a joint committee. Some of the amendments were heard by separate committees.

Q. Did you attend those hearings?

A. Yes, I attended almost all of them.

Q. Now, did it become known among the employees of the plant that you had shown an interest in that legislation?

A. Yes, I think so, maybe not so many in the shop as those in the office. At one time I went out to Madison, that was the first time the bill was introduced, the year before—

Q. You mean two years before.

A. Two years before, I went to Madison with a group of employees to watch the proceedings on the bill. That was the first time it was introduced.

Q. That is, you now have reference to the Labor Dispute Act that was introduced in the legislature of 1935.

A. Yes, sir.

Q. That was subsequently killed by the Senate.

A. Yes, sir.

Q. After it passed the Assembly.

A. That is right.

Q. And the Severson Act that we are speaking of now, that was substantially the same bill that was re-introduced in the 1937 legislature.

A. That is right.

Q. Did you go to Washington in your studies on
2043 labor relations?

A. Yes, I worked for a master's degree, that is, they appoint you to the National Institution of Public Affairs, which is a study group conducted non-partisan in Washington, to send college graduates to, to complete their master work. They are chosen to go down there from various colleges throughout the United States, and I was in the Department of Commerce, appointed in the Department of Commerce. I was there for six months.

Q. Was that prior to 1934?

A. Yes, sir.

Q. Now, did any of the men talk to you about the Severson Bill while it was in the process of being enacted, any of the employees?

A. You mean the first time it was introduced or the second time?

Q. No, I am not interested in what happened in 1935; I am asking about this last bill, the Severson Act that finally became a law.

A. Well, I know I talked to a great number of them about it, yes, one or two shop men and a great number of people in the office.

Pat Fealy for one was very much interested in it, and John Breyer; I think I had a few conversations with him about it during the course—

2044 Q. Why did they manifest an interest in discussing this bill with you?

A. Well, they knew I was following it; they knew of my interest in politics and legislation, and I gave them to understand, or they had the understanding themselves, I don't know which, anyway neutrally we believed that we came under the State act, and any State act that was finally put through we had a great interest in it, as to how it would affect us.

Q. Why do you say you had an understanding and neutrally believed you came under the State act and not under the National act?

A. We believed until I found out, I guess it was your opinion—that I was probably wrong, that under the Wierton Steel case, that our corporation would be intrastate and not interstate; therefore the Wagner Act would not affect us, whereas the State bill did affect us.

Q. So in the course of your conference with these men views were exchanged as to what would be the ultimate result of what would be the ultimate effect in event the Severson Act became a law?

A. Yes.

Q. Now, did you talk to any persons in the cafeteria or dining room of the plant regarding the position to the Severson Act?

A. Yes, sir, some time in late March or in April I 2045 talked to Stanley Adamsky for about an hour.

Q. You mean in April or March?

A. I said late in March or early in April.

Q. How did that conversation happen to take place?

A. Well, I believed at that time that the bill was going to go through, although at that time there were many amend-

ments up, and I picked Stanley out of the Works Council as a man who I thought could understand this legislation, being on the Works Council and affecting the Works Council, I thought he would be interested; so I called him myself in the cafeteria, brought down the bill together with all the amendments, all the legislation, and he and I went through it from beginning to end, the amendments that were possible, including LaFollette Amendment 30-A, and we just hashed the whole thing out, trying to show him what effect it would have on the Works Council if that bill was passed.

Q. Was there anyone else present besides you and Stanley Adamsky?

A. No.

Q. Now, after you had this conference with Stanley Adamsky at the cafeteria, was that because there is a large round table there that is easy to get around?

A. No, there was a series of four small tables and stools, just put in place; it is quiet, you can shut the door and put your books out on the tables.

2046 Q. You had a lot of printed literature?

A. Yes, I had the whole legislative service there, with all the amendments.

Q. And at that time the amendments—

A. Were many.

Q. Many of them?

A. Yes, sir.

Q. Now, after you had this conference with Stanley Adamsky was there a further conference at the cafeteria at which other men were present?

A. There was.

Q. Will you tell us how that conference happened to take place?

A. Well, Stanley Adamsky wanted to explain, or told me he would go out in the shop after the conversation and talk to other members and tell them what we discussed and what was up, and after that he told me he was not able to explain it very well, that he didn't have a very good idea of it, and he thought it would be a good idea to talk to all of the Works Council, and I think I made the arrangement for Mr. Hydar to call in all the Works Council members so that I could talk to them along the same lines.

Q. Why did you ask Mr. Hydar to call them?

A. Well, I knew he was secretary and I thought he would have to call them.

2047 Q. In the course of events then there was a meeting of the Works Council?

A. Yes, sir.

Q. When was that?

A. I think that was about four days later; I can't place the date.

Q. You said the first conference you had with Stanley Adamsky alone was the latter part of March, or the first of April?

A. Well, as near as I can place it, it was.

Q. When was this second conference?

A. About four days later.

Q. But you cannot place it exactly?

A. No, I can't place the time.

Q. Was it before the last Works Council meeting of April 5th?

A. Yes, it was.

Q. What took place at that gathering?

A. Well, I got out all of my—

Q. At which time you say other members of the Works Council were present?

A. Well, I explained to them I had talked to Stanley Adamsky about this and I wanted to talk to all of them, with all of them, and explain just what each amendment would mean, and what LaFollette Amendment 30-A would mean if it got through, and told them if this bill would pass in 2048 that form as most of us believed at that time it would, that the Works Council would be outlawed.

Q. Did you discuss at that time or did the men discuss what would be the future—what steps would be taken in the future?

A. Yes, they asked me what could be done, or what could be done after that.

Q. Did you tell them?

A. I said they had the choice of joining any labor organization they pleased, International, National, or forming their own union if it met the requirements of the bill. We tried to phrase it under LaFollette Amendment 30-A, because we believed that would go through.

Q. Do you know as a matter of fact now whether his Amendment 30-A did go through?

A. Yes, it did.

Q. That amendment specifies certain types of activities, activities the employer cannot deal in?

A. 30-A deals mostly with what is a bona fide labor organization, throws the burden upon the labor organization to prove that it does not have the employer's hands on it; it generally.

Q. Let me ask you if this isn't what it is, that it is the position in the act which throws the burden upon the Independent Union to prove to the satisfaction of the Wisconsin Labor Relations Board that it is not a company union?

A. That is correct.

Q. In order to be registered?

A. That is right.

Q. That is, it says that the union must persuade the Board that it is not a company union?

A. That is correct.

Q. In order to be registered?

A. That is correct.

Q. Now, did you hear any more about the activities of the Works Council members after that meeting?

I now have reference to the meeting in the cafeteria.

A. No, I didn't.

Q. What is the next thing that you heard about the activities of the employees who belonged to the Works Council?

A. On April 13th.

Q. What information, just tell us what you heard then?

A. Well, I was met in the office by Frank Kokalj, having returned from a luncheon meeting, and he told me a number of the employees had gathered under the basement of the hospital and that they had looked for my father and couldn't find him, and asked me if I would come down to try to explain the Wagner Act and the Severson Act to them.

I said I would. I would do the best I could.

Q. What did you do?

2050 A. Well, he went down and I came a few minutes later and entered the room and found all of these employees there, and they said they wanted to know about the Wagner Act, they wanted to know about the Severson Bill.

Q. Did they indicate what they wanted to know about those acts?

A. They wanted an explanation of what effect it would have on the Works Council, how they could form an independent union under those clauses, what they could do and could not do; whether they could join an outside union or an inside union.

They had all kinds of questions; I can't recall all of them.

Q. What was the ultimate result of your conference with them?

A. They didn't tell me any ultimate result; they just said, "That is all", and I left.

Q. Now, when you were there, Richard, were you asked anything about incorporating, anything about the incorporation of the Independent Union by any of the men?

A. Not to my knowledge, I don't recall anything.

Q. Did you state anything to the men there about what it would cost to incorporate?

A. Well, I will change my answer on that. I was asked the question definitely, how to go about incorporating, how much it would cost, how many it would take. I said, 2051 "I am not a lawyer, I don't know that."

That was, I think, in the last part of the conversation while I was there.

Q. One of the men who attended that meeting—I believe two of them—testified here in court that you specifically stated it would cost five dollars to incorporate.

A. I deny that.

Q. Do you know how much it costs to form a corporation?

A. I could not tell you that.

Q. Under the laws of Wisconsin—

Trial Examiner Batten: You mean a non-profit corporation?

Mr. Engelhard: Yes, a non-profit corporation.

The Witness: I don't know anything about it.

Q. (By Mr. Engelhard.) Do you know what a seal alone costs?

A. No, I don't.

Q. Do you know how much fee you have got to pay the Secretary of State?

A. No, I don't.

Q. Do you know how much you have got to pay a lawyer to draft the articles of incorporation?

A. No, I do not.

Trial Examiner Batten: It depends somewhat on the lawyer you get, don't you?

Q. (By Mr. Engelhard.) Did you make any state-
2052 ment to the men there that it would take three people to incorporate?

A. I did not.

Q. Did you know at that time?

A. No, I did not.

Q. How many people it would take to form a corporation?

A. I did not then and I don't today, except what I hear.

Q. It was also testified by some of the men that at that meeting you advised the men to incorporate an independent union.

A. No, I did not.

Q. Was there any discussion there as to whether or not an independent union was to be formed, at that meeting?

A. Well, they were talking about a lot of things; that was my impression, they had it in the back of their minds to form some sort of organization of their own. I did not know what they were thinking, but the questions hit along that line, to see what was legal under the act, what they could do under the act.

Q. I understand you gave them your best opinion as to what could be done under the act.

A. I did.

Q. Was that meeting you had with them on the 13th the last contact you had with these men at any meeting?

A. Yes.

Q. Did you know that a meeting had taken place on 2053 the 12th, the day before, at the same place?

A. I may have, my father may have told me, I can't recall.

Q. Now, when you left the meeting on the 13th had you been requested by the men to call someone else to the meeting?

A. I was requested to go back and look for my father.

Q. What did you do in response to that request?

A. I went back and looked for him; he wasn't there, and so I came across Mr. Connell and I told him of this meeting below the hospital; I said, "They are looking for my father, waiting there."

He said, "Well, I will go down," and so he went down and that was the last I know.

Q. Now, do you know whether or not your father attended the meeting of the 13th?

A. No, I don't.

Q. Well, do you know whether he was there or whether he was not there?

A. I don't know definitely, no.

Q. Was a letter received by the Falk Corporation dated the 20th of April, which is an exhibit in this trial here, called

to your attention, in which Messrs. Wilson, Menz and Trost state that they had approximately 400 members, and that they wanted the Falk Corporation to recognize their organization for the membership?

A. Yes; sir, I saw it.

2054 Q. And in response to that letter did you take any action personally?

A. Yes, I think I called in Mr. Wilson.

Q. When did you call him in?

A. Friday, April 23rd, I believe.

Q. Were you present at the meeting at which Mr. Wilson, Mr. Trost, and Mr. Menz conferred with Mr. Herman Falk and Mr. Connell?

A. No, I was not.

Q. But it was in response to your call to Mr. Wilson that the three men came?

A. As I recall it, I called Mr. Wilson and asked him just what he was after and he talked to me, and said substantially that he wanted to talk to us about the recognition; so my father not being there, I called my uncle and I believe the three men went in to see my uncle and Mr. Connell in the morning and they talked for a while and then left, and returned again later in the afternoon, but I was not in the meeting and I do not know what happened except what I learned subsequently.

Q. You have learned subsequently that your uncle signed a letter that was given to the men?

A. Yes.

Q. Mr. Herman W. Falk?

A. That is right.

2055 Q. Well, is he an uncle first degree, or your father's uncle?

A. He is my father's uncle.

Q. Mr. Herman W. Falk was one of the original organizers of the Falk Corporation?

A. Yes, sir.

Q. I mean of the business, I don't know what the name was originally.

A. Yes.

Q. With two other brothers?

A. I couldn't state definitely.

Q. Your father is a son of one of the original founders?

A. I couldn't state that.

Mr. Engelhard: That is all.

Cross-Examination.

Q. (By Mr. Rissman.) Your position with the company now, Mr. Falk, is a clerk in the accounting department?

A. That is right.

Q. But because of your family relationship your interest is much greater than that of an ordinary employee?

A. Interest in what?

Q. Interest in the affairs of the business.

A. Oh, yes, naturally.

Q. What degree do you have from the University of Arizona, Mr. Falk?

2056 A. Well, Bachelor of Arts.

Q. Where did you earn your Master's degree?

A. Well, I haven't received my final degree yet; I have to finish my papers on my Washington experience before I can get it, but that is where it will come from.

Q. From Washington?

A. Yes, sir.

Q. In connection with your studies at the University and in connection with the affairs of the Falk Corporation you made quite an extensive study of the Severson Bill when it was going through the House and Senate?

A. Yes.

Q. And as a result of your studies and connection with the company you have formulated opinions, have you, as to whether—rather, as to labor relations and labor organizations?

A. Well, I have some hazy ones. I think the further along I go the less definite opinion I have.

Q. Have you ever expressed your opinions even though they may be hazy, to the employees in your conversation with them?

A. Yes.

Q. This meeting in the cafeteria, the second one where the Works Council was present, was that the entire Works Council or just employee representatives?

A. I won't state definitely, because I don't know.

Q. Was it at that meeting that you told the men that they could have an independent union or form their own independent union if it met with the requirements of the law?

2057 A. Yes, I think I stated that.

Q. You have related to us the requirements, you had reference to the LaFollette Amendment to the bill?

A. Yes, I think so, that goes into it, and then I took into consideration if the LaFollette Amendment did not pass, it was substantially the same as the Wagner Act.

Q. Do you know if the Independent Union in this case has met the requirements of the law?

A. I know now that they don't have to meet the State law. What do you mean, 30-A?

Q. The requirements of the State act which says they shall persuade the Board it is not a company union.

A. To my knowledge they haven't got a charter from the State Labor Board; no.

Q. Well, they are not listed with the State Labor Board?

A. I don't know whether they have tried to be listed.

Q. You know they are not listed?

A. I don't know they are not, I don't know; to my knowledge they are not.

Q. You stated that prior to the Supreme Court decision—you haven't stated that, but prior to that time it was your opinion that the National Labor Relations Act did not apply to a business such as the Falk Corporation?

2058 A. That was my belief.

Q. Well, you were, as you have stated, mistaken in your belief?

A. I have found out since I was.

Trial Examiner Batten: Maybe it is not a mistake, he has had to change his mind.

Mr. Engelhard: I think the Supreme Court changed a lot of our minds on that.

Q. (By Mr. Rissman.) And in all of your conversations with these employees, with Mr. Adamsky or the Works Council, or at the meeting of April 13th it was not your intention at any of those meetings to violate the law as you understood the law to be?

A. No.

Q. If you had thought you were violating the law you would not have engaged in those activities?

A. No, I don't think so.

Q. But you may have been mistaken about your interpretation of the law in this respect, too?

A. I thought I knew pretty definitely what I could do and couldn't do.

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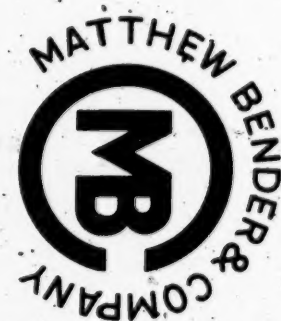
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Q. Just as definitely as you know about the scope of the National Labor Relations Act?

A. No, I think I knew my rights, what I could do and couldn't do better than that. The other falls on a much
2059 more intricate clause, as to what is intrastate and what is interstate, I think that is a more complicated theory than what management, or management's—or, representatives of management, whatever they might be termed, do.

Q. You never have considered yourself as not a representative of management in the affairs of the Falk Corporation, have you?

A. Well, I only consider myself a representative of management when I am told that I have that authority; when I haven't, I am not.

Q. With reference to the question of authority, when you are speaking to any employees even about these labor relation matters, they look upon you in the same respect they would look upon your father or any other member?

A. I doubt it.

Q. Because of difference in years and position perhaps not with the same degree, but they do feel you are management's representative, do they not?

A. Well, I don't know what they feel.

Q. There has never been much question raised about that, has there?

A. About what?

Q. About whether you were on management's or employees' side of the fence?

A. I don't get the meaning of that.

2060 Mr. Engelhard: He stated he does not know their feelings, that is an answer to the question.

The Witness: We don't feel, there is a fence to be on one side or the other.

Mr. Engelhard: Read the last statement, please.

(The record was read.)

Q. (By Mr. Rissman.) But do you feel that in everything you have done according to your own view of it, you have been within the requirements of the National Labor Relations Act?

A. I believe so.

Mr. Rissman: That is all.

Trial Examiner Batten: Have you Exhibit 31, please.

Examination by the Chair.

Q. (By Trial Examiner Batten.) Mr. Falk, Board's Exhibit No. 31, "An important message," I wonder if you will look at that please, and tell me whether you had anything to do with its preparation?

A. I know I did not, except maybe turning in the names of the Senators and Assemblymen over to them.

Q. Well, this exhibit states that "We are disposed to the Labor Disputes bills."

As far as you know has that been the position of the company, I mean as respects the Severson Act?

A. Yes.

2061 Q. Generally speaking they have opposed that.

Now, you have studied in college quite a bit of economics, political science and labor relations.

A. Yes.

Q. From your study of those subjects and so forth can you tell me what the purpose of the Severson Act was, who it was to have benefited, why, was it being passed?

A. Well, I guess the preamble of the bill says that due to the fact that the employer has a greater advantage over unorganized employees and the result of this leads to some hardship and causes strikes, that this act is to be passed to allow labor to organize for the purpose of collective bargaining.

Q. Then generally speaking the bill was passed for the principal purpose of protecting the employee, is that right? Whether rightly or wrongly, I mean that was the purpose of it?

A. My interpretation is that the bill does not follow the preamble.

Q. I am asking you if that isn't the general purpose, supposedly of the National Labor Relations Act or the Severson Bill, either one? I mean is it primarily passed on the theory that it is being passed for the protection of the employee in his right to organize, generally speaking?

A. And his right to work.

062 Q. Yes, isn't that the general purpose of it?

Mr. Lamfrom: Mr. Examiner, in the first part you put in the word "supposedly," and I presume you still—

Trial Examiner Batten: Well, I put it in because I am not certain; not having read the bill, I am not certain that was the purpose, but I am asking this witness.

Q. (By Trial Examiner Batten.) Now, take the Wagner

Act, the National Labor Relations Board Act, was that primarily passed for the benefit of the employees and their right to organize, is that right?

A. Well, I thought it was, yes, I would say the bill does that, although the preamble more or less indicates they have the right to choose—

Q. I mean under the terms—

A. Yes.

Q. —they choose for themselves. In other words, there is no provision in this bill that extends to the employer and any particular privileges, does it?

A. No.

Q. I mean it is all supposedly for the benefit of the employee, isn't it?

A. Well, I would say sometimes for the employee and sometimes not for the employee.

Q. That was not the question.

Trial Examiner Batten: Will you read the question, 2063 please.

(The question was read.)

A. Yes, I would say as against the employer, yes.

Q. (By Trial Examiner Batten.) Yes.

A. Yes.

Q. Now I wish you would explain to me why you were interested as a representative of management and why did the company keep you at Madison opposing a bill which is for the benefit of employees.

Now, you just explain that, why your extreme interest in it?

A. I will tell you, we did not go there to oppose the bill. I was working very closely with Mr. Story of the Allis Chalmers Company, and he had a substitute bill which we believed would protect the employee from coercion of any kind, from any source, and would still give them every right—

Q. You mean coercion from the union or the employer?

A. Yes, absolutely, I was in favor of the bill. Our statement stands in favor of the bill, except for certain changes which we believed sincerely would protect the employee and his right to join or not join, or to join any union or not to join any union.

Q. Your interest then in going in behalf of the employee was not because—I mean not because of any direct benefit to the employer?

064 A. No, except we knew the bill would outlaw the Works Council, and we would like to see a bill in there that would give the employees freedom of choice, absolute freedom of choice in his bargaining agency.

Q. That is what I mean, your only purpose in going was to see that the employee was fully protected in any choice he might care to make?

A. Well, what we proposed did that, yes.

Trial Examiner Batten: That is all.

Mr. Engelhard: May I ask a question in order to clear up this matter somewhat.

Redirect Examination.

Q. (By Mr. Engelhard.) Mr. Falk, this statement which is Exhibit No. 31, that the Trial Examiner now has in his hand, was that sent out in connection with the present Severson Act or was that sent out in connection with the original Labor Disputes Act which was in the Legislature of 1935?

A. The original Labor Disputes Act.

Trial Examiner Batten: Well, I understood this had no reference to it—I understood what was put out in 1935 had no reference to the Severson Act.

Q. (By Mr. Engelhard.) In other words the two bills mentioned in that notice, in that important message, were the first Severson Act and the first Sigman Act?

A. That is correct.

065 Q. And that bill was killed by the Senate?

A. Yes, it was.

Q. This has no reference whatever to the legislation that was pending in the 1937 Legislature?

A. No, it did not.

Mr. Engelhard: That is all.

Trial Examiner Batten: Mr. Clark?

Mr. Clark: I have no questions.

Mr. Lamfrom: I would like to ask Mr. Falk one or two questions.

Q. (By Mr. Lamfrom.) Mr. Falk, in working out the relations between the Falk Corporation and the Works Council as you knew them, did you or did you not feel that that constituted a relationship that was beneficial both to the employer and employees with respect to hours, wages and working conditions of the Falk employees?

A. I believe it was beneficial and I think the record convinces me more.

Q. Was it or was it not the desire of the Falk Corporation in relation to its employees, to have the law of the State of Wisconsin in such condition that it would be legal to continue the Works Council?

A. It was.

Q. Was the opposition of the Falk Corporation as indicated in Exhibit 31—will you read that, I haven't got my glasses.

2066 Trial Examiner Batten: Exhibit 31.

Q. (By Mr. Lamfrom.) Based as far as the company's own interests in opposing that bill, on the basis the company realized that the Works Council would be, that the Works Council would be in effect outlawed after the Severson Bill was passed as it was originally introduced?

A. Yes, sir, we believed so.

Mr. Lamfrom: That is all.

Trial Examiner Batten: That is all.

(Witness excused.)

Trial Examiner Batten: I believe we will have a recess for ten minutes.

(A short recess was taken.)

Trial Examiner Batten: Are we ready to proceed, Mr. Engelhard, or are you waiting for a witness?

Mr. Engelhard: No, I think we are ready to proceed.

Mr. Lamfrom is going to examine the next witness.

Trial Examiner Batten: I heard you ask if someone was here.

Mr. Engelhard: Yes, we were waiting for another witness but we will put him on.

Off the record now, please.

(Discussion off the record.)

Trial Examiner Batten: I think we had better proceed.

Mr. Engelhard: Mr. Cibulka.

067 JOSEPH CIBULKA, a witness called by and on behalf of the respondent, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Engelhard.) Will you state your name, please.

A. Joseph Cibulka.

Q. What is the first name?

A. Joseph.

Q. And the last name?

A. C-i-b-u-l-k-a.

Q. Mr. Cibulka, what position do you hold with the Falk Corporation?

A. I am supervisor of cost and payroll department.

Q. Have you with you any notes that you have been requested to bring?

A. Yes.

Q. Now, before you came here were you requested to abstract from your records the number of employees of the Falk Corporation on certain days?

A. I was.

Q. What days are those?

A. April 23rd, 1937, and May 5th, 1937.

Q. Will you take your notes referring to May—no, to April 23rd, first, and will you state in what form you made, that is, what the calculations are?

068 A. These are made up on the basis of the number of employees in each department.

Q. On that day?

A. On that day.

Q. What did you use as a basis for this?

A. Our payroll.

Q. Your payroll as of that day?

A. Yes, sir.

Q. For the 23rd?

A. Yes, sir.

Q. And also as of the payroll of May 5th?

A. Yes, sir.

Q. Now, will you name the department and give the number of men in the specific department?

A. In the foundry on April 23rd, 526.

Mr. Rissman: I did not get that.

The Witness: April 23rd, number of employees, 526.

Do you want May 5th?

Q. (By Mr. Engelhard.) No, just take April 23rd first.

A. Machine shop, 607.

Pattern shop, 40.

Drafting and engineers, 79.

Maintenance department, 61.

Welding—

Trial Examiner Batten: Just a minute, not quite so 2069 fast, please.

Mr. Rissman: Just take it a little easier. How many in the maintenance, please?

The Witness: 61.

Welding, 54.

Heat treat, 8.

Powerhouse, 15.

Office and payroll, 95.

Miscellaneous, 45.

Q. (By Mr. Engelhard.) Can you state what you mean by "Miscellaneous"?

A. Superintendents, foremen, sales—salesmen.

Q. (By Mr. Lamfrom.) What is the total?

A. 1530.

Q. (By Mr. Engelhard.) Now, take May 5th, 1937, will you read the same departments and give us the number of employees in each department?

A. Foundry, 527.

Machine shop, 610.

Pattern shop, 40.

Drafting and engineering, 80.

Maintenance, 61.

Welding, 55.

Heat treatment, 8.

Powerhouse, 15.

2070 Office and payroll, 95.

Miscellaneous, 45.

Q. And what is that total?

A. 1536.

Q. Now, I notice you have a third column there, can you tell me what that third column is?

A. That is the number of employees by the same divisions as of June 15th, 1937.

Mr. Engelhard: May I ask you, Mr. Rissman—

Trial Examiner Batten: There is one here for June the 15th.

Mr. Lamfrom: I might call attention of all the parties here to the fact that the stipulation on file gives the number of employees under the same classes as of June the 15th, 1937. That is already stipulated.

Trial Examiner Batten: Then it is not necessary.

Mr. Engelhard: That is why I asked whether or not those figures are already in the record by means of the stipulation.

Mr. Rissman: Mr. Engelhard, the witness has described those who are termed "Miscellaneous".

Now, will you have him state, or we can stipulate that the "Miscellaneous" number in the stipulation includes the same type of employees as the "Miscellaneous" he has testified about.

2071 Q. (By Mr. Engelhard.) Mr. Cibulka—

A. Yes, sir.

Q. —the 54 miscellaneous persons under the column, June 15th, the same 54 being mentioned in the stipulation, are those under the classification "Miscellaneous" the same type of people that you referred to when you said 45 under date of April 23rd and under date of May 5th?

A. They are the same.

Q. Foremen, superintendents and salesmen?

A. That is right.

Q. Now, have you with you also some notes on the payments made by the Falk Corporation to the men who attended some meetings?

A. Yes, I have those.

Q. Will you produce your notes.

Before we get into that subject, is it correct to say, Mr. Cibulka, that the employees whom you have classified in the various classifications other than miscellaneous are in no respects supervisory employees, such as foremen or superintendents?

A. No, they are not supervisory.

Q. Those figures that you gave are in every instance what you might call workers?

A. That is right.

Q. Who have no supervision authority?

2072 A. Outside of "Miscellaneous" and "Office and payroll department".

Q. Do you include in this list office and payroll departments?

A. In this list of the number of employees?

Q. Yes.

A. Yes, they are in here.

Q. (By Trial Examiner Batten.) Where does straw-boss come in, in this classification? Straw-boss, pusher or subforemen?

A. Well, a straw-boss would be paid on an hourly basis, he would be in this detailed classification by departments.

Q. In other words, if you had any straw-bosses or seconds or pushers or lead-men they would be under your hourly classification?

A. That is right.

Q. By departments?

A. That is right.

Q. Have you any record to show as to how many of that type of men you have?

A. I have no record on my person.

Q. Is there any way you can tell?

A. I can.

Q. From your records in the office, who the straw-bosses are?

2073 A. Yes, sir.

Q. Pushers or lead-men?

A. Yes, sir.

Q. Could you furnish us that information tomorrow morning?

A. Yes, sir.

Q. Will you do that?

A. You are referring now to assistant foremen?

Q. Assistant foremen, straw-bosses, pushers or lead-men.

A. Yes.

May I ask what you mean by "lead-men" or "pushers"?

Q. Well, in some places they call them straw-bosses or pushers; in other words, I wouldn't know what you call them, but in some places they call them lead-men, some places second-hand.

In other words, the assistant foremen or straw bosses, you have those by name, have you?

A. Yes, sir.

Q. Well, will you bring in a list of the names of those men that you classify as straw-bosses or assistant foremen?

A. Well, I will do that.

Mr. Rissman: Off the record, please.

(Discussion off the record.)

Mr. Engelhard: That is, you will accept the list as it is furnished?

Mr. Rissman: Yes.

2074 Mr. Engelhard: Suppose you sign your name to it, Mr. Cibulka, so we will know that is the list requested by the Trial Examiner.

The Witness: Yes, sir.

Q. (By Mr. Engelhard.) Now, referring to your notes on the men who were paid while attending meetings on the 12th of April have you the classes and dates?

A. I have the classes here under the dates of April 12th, 13th, 14th and 15th.

Trial Examiner Batten: You don't need to put this in the record.

(Discussion off the record.)

Q. (By Mr. Engelhard.) Do you know whether or not any men who attended the Works Council meeting on the 8th and who were not members of the Works Council were paid?

A. As far as they were there, they were all paid; everyone of them who attended the meeting.

Q. Of the 8th?

A. Of the 8th.

Q. Do you know whether or not any of those men had subsequent deductions?

A. Not for attending the meeting of the 8th of April.

Q. Not for that meeting?

A. No.

Q. Pardon?

2075 A. No.

Mr. Engelhard: Well, in view of that fact, Mr. Examiner, do you want that list?

Trial Examiner Batten: Yes, I still want a list of those who were ex-members, not regular members.

Q. (By Mr. Engelhard.) Then you will make such a list and sign it also?

A. Yes, sir.

Q. Now, in connection with your notes here what are the facts?

A. My attention was first directed to these meetings by means of a daily time ticket which originates in the shop, and to which these men charge their time spent on various jobs or whatever they may be doing during the day.

At the time those tickets reached me our office did not know the nature of those meetings.

As a result, the payroll period which ended on April 15th, the payroll was compiled and we did not discover the nature of these meetings until the checks had already gone out.

Q. You mean your department didn't?

A. That is right. Well, when we find them—of course, we were specifically instructed that the men are not to be paid for those meetings.

Q. Then what happened subsequent to the 15th? You 2076 said they were paid on the 15th?

A. No, the pay period closed on the 15th of April.

Q. When you made up your payroll after the 15th of April you included in the payroll the time that the men attended these meetings?

A. That is right.

Q. But you said you didn't know what that time was?

A. That is right.

Q. And subsequently what happened?

A. We were instructed that all time of attending these meetings was not to be paid for.

Some of these men had already received their checks and it was necessary then to deduct it on the following pay.

Q. When was that?

A. That pay was on the 8th.

Q. Did you know when the men were paid their checks on the payroll which was made up as of the 15th?

A. The night men were paid on the night of April 22nd and the day men on the morning of April 23rd.

Q. Now then, your notes here shown on the—the notes you have here show the individuals were paid certain amounts.

A. That is right.

Q. Will you indicate what they were paid?

A. Do you want me to read the names?

Q. Yes.

2077 A. H. Snyder is No. 2226, 4.1 hours, \$2.66.

Clock No, 2323, Stanley Adamsky, 11.9 hours, \$8.33.

No. 2443, G. Kassin, 3.4 hours, \$2.07.

No. 2421, Frank Russitti, 4 hours, \$2.48.

No. 24227, Robert Gillette, 4 hours, \$2.28.

No. 2941, William Neal, 9 hours, \$4.77.

No. 3025, Nat Bernklan, 3.3 hours, \$2.87.

No. 3151, M. Gagliano, 2 hours, \$1.50.

No. 50155, L. Greget, 8.4 hours, \$8.15.

No. 50240, H. Landry, 16.1 hours, \$13.20.

No. 50304, Dan Martin, 5.5 hours, \$4.81.

No. 50374, H. Jones, 12.1 hours, \$9.32.

No. 50878, J. S. Wolf, 9.5 hours, \$6.37.

No. 50709, J. Trost, 5.8 hours, \$4.99.

No. 6003, E. Kothrade, 3.3 hours, \$2.67.

No. 6027, J. F. Mitschka, 6.5 hours, \$5.33.

No. 7305, William Kirsch, 8 hours, \$7.36.

No. 7306, Frank Kokalj, 4 hours, \$3.00.

No. 7412, Jacob Sattler, 1.1 hours, \$1.25.

That is the complete list.

Q. That covers all of the meetings of the 12th, 13th and 14th, and you say you have then the 15th—

A. That covers all of the meetings that were mistakenly compensated for on those days.

Q. Now, then, your records show subsequently the 2078 amounts you have read into the record were deducted from each pay check?

A. They show that.

Q. Were you requested to bring any additional information here?

I am just asking for my own information.

A. No.

Q. That is all you were asked to bring?

A. Yes, sir.

Mr. Engelhard: Is there anything in addition, Mr. Rissman, that we agreed to produce here from him?

Mr. Rissman: I don't recollect anything further; I think that is all, unless the Examiner wishes—

Mr. Engelhard: Do you recall, Mr. Examiner?

Trial Examiner Batten: No.

Mr. Rissman: I think that is all we asked.

Mr. Lamfrom: Now, it is understood the witness is to prepare that list of names that you asked him for, Mr. Batten.

Trial Examiner Batten: Yes, and the ex-members of the Council.

Mr. Lamfrom: That is right.

Trial Examiner Batten: That is all that I can think of.

Mr. Engelhard: And the so-called straw-boss list.

Trial Examiner Batten: I think that is all.

Mr. Lamfrom: Just a moment.

2079 Trial Examiner Batten: Oh, just a moment.

Q. (By Mr. Engelhard) Mr. Cibulka, what do you define as a straw-boss, what is your definition of straw-boss?

A. I wouldn't entirely rely on my own definition for that.

I believe he is a man who is a sort of assistant to the regular foreman, takes care of perhaps some detailed work that the general foreman does not have time to, or relies on another man to take care of.

Q. Well, does a straw-boss have any right to hire or fire?

A. He has not.

Mr. Engelhard: That is all.

Q. (By Mr. Rissman) Does he have a right to recommend the firing or hiring of an employee?

A. Oh, I believe he has.

Mr. Rissman: That is all.

Trial Examiner Batten: I don't think there is any question about what we mean by straw-boss.

Mr. Engelhard: Just so we know he has something in mind when he looks for these names.

Now, Mr. Examiner, have you any other classification except that particular type that he has now defined?

Trial Examiner Batten: Well, I might ask, your idea of a straw-boss is a man who sort of acts as assistant to the general foreman?

The Witness: That is right.

2080 Trial Examiner Batten: For instance I think there was one man here today—what was his name?

Mr. Rissman: Trost.

Trial Examiner Batten: (Continuing) Mr. Trost, who at times had four or five men helping him assemble a big piece of equipment and at times he has to give them directions.

Now, would that be included in your idea of what a straw-boss is?

The Witness: Not unless he did that generally.

Q. (By Trial Examiner Batten) In other words, in this list of names are included those men who you know are generally considered to be straw bosses?

A. Whose regular duty it is to assist—

Q. Yes.

A. —the foreman.

Trial Examiner Batten: Yes, I think we understand what it is.

Mr. Clark: I would like to ask a few questions.

Cross-Examination.

Q. (By Mr. Clark) Mr. Cibulka, I notice that Mr. Landry received \$13.22. How many hours did he put in attending these meetings?

A. That is on the record, 16.1 hours, I believe.

Q. (By Mr. Engelhard) That is the largest number of hours you have on that list, is it not?

081 A. That is right.

Q. What is the next largest number of hours?

Trial Examiner Batten: Now, just a minute, he was going to explain.

The Witness: I can explain the reason for that.

Mr. Landry at that time worked on a shift other than the one during which these meetings were held, which resulted in his time for that day being in excess of eight hours.

The policy of the company is to pay time and a half after eight hours work, with the result that a lot of that—in fact practically all of Mr. Landry's time includes that wage at time and a half, at the time and one half rate.

Q. (By Mr. Engelhard) Then is this correct to say: that the 16.1 hours you have there in fact represents more time than the actual number of hours?

A. These are payroll hours, they are not actual hours.

Trial Examiner Batten: That was the amount deducted, not the time actually spent at the meetings.

Mr. Engelhard: I see.

Q. (By Mr. Clark) Are there any night men on that list?

A. I believe Harry Jones is a night man, and I don't know what Mr. Neal is a night man, Bill Neal.

I am not exactly positive about what shift some of these fellows worked on, I couldn't pick them out offhand.

Q. Now, Mr. Cibulka, with reference to the method
082 used in the payment of the men at the powerhouse, are you familiar with that?

A. I am.

Q. Is there any difference between the way they are paid or the classification than other men in the plant?

A. The powerhouse men are paid on a monthly salary basis.

Q. Well, you have some monthly salary men in the plant, too, don't you?

A. Yes, surely.

Q. There is no distinction made in the payroll with the men in the powerhouse as compared with other men in the plant, is there?

A. There is no distinction, that is, they are not in the supervisory force, since the supervisory force is all paid on a salary basis. The powerhouse is not paid on a monthly salary basis, but they are included in the shop wage group.

Q. And the company has always had that inclusion, that the powerhouse included in the wage group at the plant?

A. That is right.

Mr. Clark: I think that is all.

Q. (By Mr. Rissman) Are there any employees in the plant, excluding now the powerhouse, other than supervisory employees who are paid on a monthly basis?

A. Well, the plant, our draftsmen and engineers are paid on a monthly basis.

2083 Q. And aside from those?

A. No, the salary list includes supervisory. There is one man that I know of who works on a salary basis, who is to be included in the shop.

Q. Who is he, what kind?

A. He is a teamster.

Q. With that exception of the teamster, the powerhouse, the drafting room and the supervisory employees, everybody else is paid on an hourly basis?

A. That is right.

Q. (By Mr. Engelhard) How about the clerical workers, the office workers?

A. The office workers, that is, the shop clerical, the shop clericals are paid on an hourly basis, that is the departmental timekeepers.

Q. (By Mr. Rissman) Yes, how about the main office?

A. The main office clerical is paid on a monthly salary basis.

Mr. Rissman: That is all.

Mr. Engelhard: That is all.

Mr. Clark: That is all I have.

Trial Examiner Batten: That is all, Mr. Cibulka.

(Witness excused.)

Mr. Lamfrom: Now, Mr. Examiner, outside of three or four witnesses who are employees of the powerhouse, 2084 whom it is not convenient to bring in just at this time and their testimony will be short, and also the possibility of going over the transcript we might want to introduce a little evidence here and there to close up the case, our case will be covered by the testimony of Mr. Falk who is here now.

Trial Examiner Batten: Do I understand you would like to have Mr. Falk testify now?

Mr. Lamfrom: Yes.

Trial Examiner Batten: With the privilege tomorrow—

Mr. Lamfrom: Tomorrow morning of having these powerhouse men.

Trial Examiner Batten: Might I ask you, Mr. Lamfrom,

if you will—of course, you have two or three powerhouse men?

Mr. Lamfrom: Yes.

Trial Examiner Batten: You had better—

Mr. Rissman: Notify Mr. Goldberg.

Trial Examiner Batten: Yes, Mr. Goldberg had better be notified. Will one of you gentlemen notify him?

Mr. Rissman: I will do that.

Trial Examiner Batten: How long do you anticipate the two or three powerhouse men will take?

Mr. Lamfrom: I think the whole business including cross-examination can be wound up inside of a half an hour.

Trial Examiner Batten: What I was thinking about 2085 was, so that Mr. Clark could make his plans to—you will examine Mr. Falk tonight?

Mr. Lamfrom: I do, yes.

Trial Examiner Batten: So that Mr. Clark may anticipate that he can start by ten o'clock at the latest, tomorrow morning.

Mr. Lamfrom: Oh, yes.

Trial Examiner Batten: And probably before.

Mr. Lamfrom: Probably, yes.

Mr. Clark: Are we planning a night session?

Trial Examiner Batten: Not tonight. We have made sufficient progress, so that I don't think it is necessary.

So that you could plan, Mr. Clark, on sometime between nine-thirty and ten o'clock tomorrow morning.

Mr. Lamfrom: May we have a short intermission, if the Examiner please?

Trial Examiner Batten: I think that is a very good suggestion.

Mr. Lamfrom: You and I seem to agree on that, Mr. Examiner.

(A short recess was taken.)

Trial Examiner Batten: I believe we are ready to proceed.

Mr. Lamfrom: Mr. Falk, will you take the stand now, please.

2086 HAROLD S. FALK, a witness called by and on behalf of the respondent, being previously duly sworn, was examined and testified as follows:

Direct Examination.

Trial Examiner Batten: You have been sworn, I believe, haven't you, Mr. Falk?

The Witness: Yes, sir.

Trial Examiner Batten: That is right.

The Witness: Yes, sir.

Q. (By Mr. Lamfrom) How old a man are you, Mr. Falk?

A. I will be 54 in December.

Q. Are you a college graduate?

A. Yes, sir.

Q. From what institution did you graduate?

A. University of Wisconsin.

Q. What was your training while in college?

A. I took an engineering course, graduated in 1906.

Q. Did you receive a degree as a result of your college course?

A. I did.

Q. And what was that?

A. Bachelor of Science?

Q. Have you since that time received any other or further degrees from any colleges?

A. I received an honorary degree from the University of Marquette in Milwaukee.

Q. What was the occasion of that?

A. Well, I think it was in recognition of some apprentice work that I did—that I had done here in the city.

Q. How old were you when you first entered the employment of the Falk Corporation?

A. Well, I put my first summer in, in 1900; I think I was about 17 years old.

Q. Going back to your engineering training, what kind of engineering work did you take?

A. Well, I took a rather mixture of engineering.

There was at that time no specific metallurgical course offered at the university but I wrote by thesis in metallurgy under H. F. Moore, who later went down to the University of Illinois.

Q. Did you enter the employment of the Falk Corporation immediately after you finished college?

A. Permanently, yes.

Q. What was your employment at the beginning of your relations with the respondent here?

A. Well, I worked in the maintenance department at the time.

Q. In working in the maintenance department did you have contact with the employees of the company?

A. I worked right along with them.

2088 Q. Did you start on an hourly basis or a daily basis, or a monthly basis?

A. Well, my—I think when I started to work there during the summer, I got so much for the summer's work.

Q. You worked there during the summer?

A. My very first employment, yes.

Q. Now, after you left the maintenance work what department were you in?

A. Then I got into the foundry as assistant to the superintendent of the foundry.

Q. And for how long a period were you in that employment?

A. Oh, I don't recall, probably three or four years, maybe five.

Q. While you were in that employment did you have a close and pleasant contact with the employees in that department?

A. Well, I was constantly in the plant with the men.

Q. You talked with them?

A. Always.

Q. Did you get their ideas in both the maintenance work and in the department you are now testifying to, their ideas about labor relations and employment matters generally?

A. I feel pretty sure I did; it is pretty hard to work shoulder to shoulder with these fellows without absorbing a little of that.

Q. Now, after you finished this foundry department
2089 what did you do?

A. Well, I was superintendent of the foundry for a while.

Q. In that respect while in such employment did you have general supervision of the foundry?

A. That is right.

Q. And about how many employees were there over whom you had supervision? I am only asking, of course, for approximate figures.

A. I guess it would be maybe 200.

Q. Your duties as superintendent caused you to mingle and come in contact with all the men from time to time?

A. Very closely, yes.

Q. You conversed with them and learned what their ideas were about their relations with the Falk Corporation during that time?

A. I would say, yes.

Q. And after you—what was the next job that you had?

A. Well, I think after the—after my job as superintendent of the foundry I became general superintendent of the plant.

Q. About when was that?

A. Well, that was just a little previous to the war, I don't remember exactly the date, somewhere around 1913 or 1914. I guess.

Q. How long a time were you general superintendent 2090 of the plant?

A. Well, until about 1919; I guess, 1918 or 1919.

Q. 1919?

A. Somewhere along about that.

Q. During that time did you have occasion to mingle in a general way with the men employed by the company in practically all departments?

A. Yes, I did.

Q. Did you come in contact with the employees during the time you were the boss?

A. Yes, I did.

Q. During that time did you have occasion to confer with employees and get their reactions, actions and reactions with respect to employment relations with the Falk Corporation?

A. Yes, the fact of the change in title did not make very much change in my duties except spread them a little bit further, that was all.

Q. Then after you ceased to be general superintendent what was your office?

A. I think it was in about 1920 or 1921—I don't remember exactly—then I was made vice president and works manager.

Q. And you have been in that position ever since?

A. Every since, yes, sir.

Q. Up to the present time?

A. Yes, sir.

2091 Q. Since you became vice president and works manager has there been any change in your contacts with the men other than they may be less frequent?

- A. Not very much.
- Q. Have you still gone in and out and around about the different departments of the plant and kept in contact with the men employed?
- A. I still spend a great deal of time in the plant, yes, sir.
- Q. Do you know many of them personally?
- A. Quite a few, yes.
- Q. Now, during the time that you advanced in the Falk Corporation in accordance with your testimony did the number of men the corporation employed increase?
- A. Yes, quite considerably.
- Q. And there is now employed by the corporation several hundred more employees than there were at the time when you first formed your connection with it?
- A. Oh, yes.
- Q. Now, Mr. Falk, have you held any offices here in the City of Milwaukee of a public nature?
- A. Yes, I am a member of the Vocational School Board.
- Q. What is the Vocational School?
- A. Well, it is a school that takes the young people who have to work for a living and gives them schooling according to the State law, a half day each week, and that is compulsory up to the age of 18, I believe, unless they have had high school.
- Q. What is the—strike that out.
- Is the school a large institution?
- A. They have about 18,000 youngsters in this school.
- Q. Is it a nationally known institution?
- A. Nationally and I think internationally, yes, sir.
- Q. And it is run by the City of Milwaukee?
- A. Yes, that is right.
- Q. It is a public institution?
- A. A public institution.
- Q. And how long have you been on the board of the Vocational School?
- A. Seven or eight years, I believe.
- Q. Is that position by appointment?
- A. It is, I think you would call it appointment by the regular School Board.
- Q. The regular School Board of the City of Milwaukee appoints the members of the board of the Vocational School?
- A. That is right.
- Q. And are you president of that board at the present time?

A. I am now, yes.

Q. And how long have you been president of the board?

A. I think about two or three years, I am not sure.

Q. How much time in a general way do you devote 2093 to the interests of the Milwaukee Vocational School?

A. Well, we have regular meetings once a month and then there are occasions when I go down or some of the faculty, that is, the managerial end of the faculty, whatever you would call them, come down to see me or I go and see them; it is pretty hard for me to tell how much time.

Q. That is a position of honor, and not one dependent upon compensation, is it not?

A. There is no compensation.

Q. Now, you spoke of attention to apprentice work, will you kindly explain what you mean by that and what, if anything, you have done in that regard in the city of Milwaukee?

A. Well, I got rather interested in it about 1920 or 1921, because I felt very distinctly that there was a lack of training going on among the metal trades group in the city of Milwaukee, and as usual, when you find fault with others, why, they give you a job, and that was the way I got the job of chairman of the Apprentice Committee of the Metal Trades Association.

Q. What does that committee do? Give us an idea of its operations?

A. Well, what we tried to do was to revive the apprentice training plan among the metal trades group here and tried to bring into being a program that was up to date and that would fit into the present arrangement that you find in 2094 business where in most cases management is a little bit removed from the direct contact with the people.

Q. Was there a school maintained in connection with that venture?

A. We used the Vocational School as the school for the curricular work and used the shops for the related work.

Q. And I suppose that in your connection with the Vocational School and apprentice work that you have come in contact with the youth of the city?

A. Yes, I have.

Q. And you have talked with them and discussed matters of general interest with them from time to time?

A. Well, I have talked to them on a good many occasions, and we had at one time 150 of them in our own plant.

Q. And you have gathered some of their ideas and opinions and aspirations with relation to all employees?

A. I think I have decidedly, because many of the boys used to come and sit down and talk with me about it.

Q. You have devoted a considerable portion of your time, have you not, to that apprenticeship school?

A. For a period of years I did, yes.

Q. About how much of your time and energy?

A. That is difficult for me to say.

Q. I mean, would you say you devoted more than hour or two a day or week or a week a month? Just to get
2095 sort of mosaic of your activities?

A. That is rather difficult, Mr. Lamfrom. There were occasions when a good bit of time was taken up with them, and then go along again for a period and there wasn't any great activity.

It is difficult for me to make an estimate that would be worth anything.

Q. Do you think that your contacts in the plant with the men spread over the period which you advanced in the Falk Corporation, contributed to your understanding of the problems concerning employment relations?

A. I hope I did.

Q. Do you think so?

A. I do.

Q. Do you think anything has been added to that comprehension of the problems that arise in those relationships by your Vocational School work and also your apprentice training work?

A. Yes, I do.

Q. Now, getting into the more immediate present and less remote past, when were you aware of any agitation in the Falk Corporation plant on the part of the C. I. O. union?

A. I don't think I can fix that date.

Q. Well, approximately the month.

A. Well, some time previous to the meeting that I
2096 attended under the hospital I should say, but just how long, I would hesitate to say.

Q. Do you remember about the time the meeting in the hospital was held?

A. It was some time in the afternoon, I think.

Q. Now, I mean the time of the month or the month.

A. It has been repeated here so often that it was the 12th of April, that is the only way I know what the date is.

Q. Well, some time prior to then, or around the time of the 12th, you became aware of the fact that there was a campaign on at the Falk Corporation to get members in the C. I. O. union?

A. I would say that is right.

Q. Who brought that to your attention?

A. I haven't the slightest idea.

Q. Do you remember?

A. No.

Q. When that was brought to your attention did you yourself do anything to stop that activity?

A. Not that I recall.

Q. Did you as the vice president and works manager of the Falk Corporation, issue any instructions to any of the other officers or to superintendents to stop or interfere with such a campaign?

A. No.

2097 Q. Did you have any discussion with Mr. Herman Falk, the president of the company, with reference to the fact that this campaign was going on? I mean at or about the time you heard about it.

A. I imagine I did.

Q. Well, just attempt to get your memory back to that time and see whether you can answer that question a little more definitely?

A. I don't think so Mr. Lamfrom, because there was hardly a day went by that I didn't have some conversation with him and I am perfectly certain in those conversations that was mentioned.

Q. Now, was it considered by you an important piece of information that these activities of the C. I. O. union were being carried on in the plant? Did you consider that a matter of importance as vice president and works manager of the Falk Corporation?

A. Yes, I would say I did.

Q. Now, from what aspects or for what reason would you consider that matter important?

A. Well, I was rather disappointed about it, to tell you the truth.

Q. Go a little more in detail for the reason.

A. Well, I felt that we had always gotten along with our people in pretty good shape without any outside assistance and I thought we got on very amicably and very satisfactorily with it, and it was quite a disap-

2098

pointment to me to think that some fellows would go to an outside source for that sort of contact.

Q. You did not feel, did you, that were these employees to go to an outside organization, it was any more than an exercise of their rights?

A. No.

Q. At that time did you have any thought or discuss a plan to attempt to stop the activities of unionization as represented by the C. I. O. in the plant?

A. No, sir.

Q. At that time were you familiar with the fact that the Wagner Labor Relations Act was the law of the land?

A. Yes.

Q. And that it gave to labor organizations and employees certain rights that they had not had before?

A. Yes.

Q. Were you familiar with that in a general way?

A. Yes.

Q. Will you now tell me in what respect at that time you knew that the Wagner Labor Relations Act had changed the legal rights of employers and employees in their employment relations, the essential things as you knew them?

A. Well, I simply knew that the Act gave them the right to choose whatever agency they wanted to represent them, and that the employer was duty-bound not to coerce or persuade or threaten in any way their activities.

Q. But the fact that that was the legal situation as brought about by that act occurred to you at the time you heard the C. I. O. were getting members in the plant, and you felt it was rather a disappointment to you?

A. Yes, I think I did.

Q. Did you at that time, referring to the time when you received this information, have any thoughts about the future of the Works Council as being affected, first, by this C. I. O. activity?

A. No, I don't think I did at that time, I don't think that entered my mind at all.

Q. Did you have any thought as to whether or not the status of the Works Council was being affected by the Labor Relations Act, the National Act?

A. No, I don't think I did, I didn't give that very much thought.

Q. Did you at any time subsequent to April 12th or 13th

have any idea as to whether or not the Works Council situation would be affected by the so-called Severson Bill?

A. Yes, there was a good deal discussed just around that time that brought it pretty forcibly to the front.

Q. That is, there was discussion about the Severson 2100 Bill and there was discussion about the C. I. O.?

A. Well, the Wagner Act, too, because of the Supreme Court activity, that was about that same time, there was a good deal of discussion, not only at the time, but in the newspapers and all over, so that you would be bound to be conscious of it.

Q. It appears that the Supreme Court upheld the validity of the Wagner Act on April 12th.

A. It was around that time, I can't pin it down.

Q. Well, as vice president and works manager you were doing some thinking, weren't you, about, around that time, April 12th, because of the fact that the C. I. O. was active in the plant, the Severson Bill was pending in the Legislature and the Supreme Court had decided the Wagner Act valid?

A. Yes, I would say so.

Q. Was your thought in respect to the items or elements discussed, towards whether or not the Works Council should be kept up or whether the Works Council should be abandoned, ended and abandoned?

A. I don't think it was, that didn't enter the picture very seriously with me.

Q. Well, your relations at that time, taking the three items, or any one of them, was immediately about to change your relationship—by your relationship I mean the relationship of the Falk Corporation, to its employees in respect to dealings with them in collective bargaining.

A. Yes, I think that is right, I couldn't help but get that.

Q. Did you have any idea or make any plan as to whether—as to how you would meet the change which seemed imminent?

A. No, sir.

Q. Did you discuss that question with any of your co-officials?

A. Oh, I think probably we discussed it.

Q. Did you come to any conclusions on it?

A. Not that I can remember.

Q. I mean as corporate manager?

A. No.

Q. Did you at any time come to the conclusion that under the status of the law as it existed, after the Supreme Court's decision on the Wagner Act, that the Works Council would not be considered a lawful organization?

A. May I ask the gentleman to read that.

Mr. Lamfrom: Yes, read the question.

(The question was read.)

A. Yes, I think I did.

Q. (By Mr. Lamfrom) Did you consider—strike that out, please.

Did you come to the conclusion that if the Wisconsin Labor Relations Act became a law, that the status of the Works Council would be in serious jeopardy?

2102 A. Yes, I think I did.

Q. Were you aware of the fact that under the provisions of the Wisconsin Labor Relations Act—

Mr. Lamfrom: Will you read that question, please.

(The question was read.)

Mr. Lamfrom: Strike that out.

Q. (By Mr. Lamfrom) Were you familiar with the fact that the so-called Severson Bill contained a clause in it that in effect would outlaw, under the laws of the State of Wisconsin, the Works Council?

A. I read the bill but I can't tell you just when.

Q. But were you aware of the fact—

A. I was aware of that fact, yes.

Q. Now, did that fact lead you to any conclusion as vice president and works manager, as to what, if anything, the company should do with reference to participating in the Works Council?

A. No, I did not because I knew that we didn't have any business to participate in any formation regarding that.

Q. Well, did you come to the conclusion sooner or later or at or around April 12th, that the Works Council as it was then conducted, would have to be abandoned?

A. Yes, I did.

Q. Can you state about what time you came to that conclusion?

2103 A. No, I cannot.

Q. When did you first become aware of the fact that there was a movement on among the employees of the Falk Corporation to form this so-called Independent Union?

A. Well, I think the first discussion that I can recall now was the discussion that was had under the hospital, which I had with the boys down there.

Q. In other words, did you know anything about the formation or attempted formation of an independent union before you were called down to the hospital?

A. It does not register definitely with me at all now, except that meeting.

Now, I may have known something about it before, but if I did, I don't recall it.

Q. Well, did you do anything about it, do anything with reference to it, did you help in any manner or in any way?

A. No.

Q. Excuse me, let me finish. Did you desire to effect such an organization?

A. Not that I know of.

Q. Well, you would know if you did?

A. Well, if I did anything it probably would have registered.

Q. Are you aware now of having done anything that would help those who were attempting to create such an organization?

A. No.

Q. You see if I understand correctly, that your memory now is that the first knowledge, the first time the movement for an independent organization was called to your attention was when you were under the hospital?

A. Right.

Q. That was about—

A. According to the testimony here it was April 12th.

Q. Yes. You remember very well going to the hospital that day?

A. I remember that, yes, I do.

Q. Who asked you to come to the hospital?

A. That I don't recall.

Q. Well, do you recall whether it was anyone of management?

A. No, I don't.

Q. You don't recall that?

A. No.

Q. All you remember is you were asked to come there?

A. Somebody met me in the office and told me the boys wanted to see me over there, I don't know who that was.

Q. When you went over in response to the request, did you know what kind of meeting was taking place?

A. No.

Q. Had anybody informed you theretofore there was going to be a meeting?

A. No.

Q. Of the men?

A. No.

Q. Well, you went over there.

A. I did.

Q. And you met some of the employees of the company?

A. I did.

Q. About how many?

A. I haven't any idea, there were quite a few.

Q. Can you estimate the number, 15 or 20?

A. 15 or 20, I should say. It was a long table, they sat on both sides of the long table; it was quite a long table, and I should say from here to Mr. Rissman.

Q. Was any application made to you as works manager for permission to use the hospital for this meeting?

A. I don't think so, I don't remember that.

2106 Q. Did you think you would remember it if any such request for permission had been made of you personally?

A. Well, I might. If somebody came and asked me that when I was talking to somebody else, I might have said "Yes, go ahead", without giving much thought to it, and it did not register. I have no recollection of having done it.

Q. Well, you got to the meeting.

A. I got to the meeting, yes, sir.

Q. State what occurred.

A. Well, as I recall it, substantially I was asked to explain the Wagner law. I did the best I could with it, informed the fellows that I was not a lawyer, and that I could give only such information as I had gathered in discussions and reading articles and so forth, and I think the conversation from there went into the question of what would happen to the business if a group joined one labor organization and had to do business with other companies who had different labor organizations in their plants, and I said it didn't seem to me that it would make very much difference one way or the other to me whether they joined the C. I. O. or the A. F. of L. or any other organization, that chances for that sort of difficulty would be just as great one way as the other.

And as I recall, I cited an incident of the Allis-Chalmers trucks down here at the Exposition a day or so 2107 or two days before, I don't recall now, where the C. I. O. boys came down and the A. F. of L. Fellows would not take the stuff off the trucks:

A. I recall, I said it didn't seem to make very much difference to us one way or the other, if it came to that sort of situation we would probably have to cross that bridge when we got to it anyway.

Q. Now, I assume that the first information you had with reference to this meeting was when you attended it, actually attended and the boys asked you the questions which they did and you answered them, were you then convinced that the company had reached a period of in its labor relations with its employees in which the company should do something?

A. I don't know just what you mean, we should do something.

Q. Well, there was something indicated to you by the questions of these men there as to what the purpose of this meeting was.

A. Yes.

Q. And I presume that you got from them that they wanted to know whether pursuant to the law as it stood at that time, they could form an organization of their own.

A. Well, I rather deduced that they were looking for information to form their judgment on what to do about it, because it seemed to me that they were somewhat concerned about the amount of business that the plant might get if they did one thing or the other, and I imagine that they would be interested in that, because after all it is their party just as well as ours.

Q. Well, did you leave that meeting with the idea that you were going to meet with the men again?

A. No, I don't think I did.

Q. You did meet with the men again?

A. Not as a group like that, that I can recall.

Q. When did you next meet with any of the men with respect to the question of your employment relations?

A. Well, I think the day those three fellows came into my office and asked me about a lawyer.

Q. That was the next meeting?

A. That I can remember, yes.

Q. You have testified in the examination by Mr. Rissman as to what that conversation was.

A. I think I did.

Q. Now, outside of the meeting at the hospital, and the meeting in your office at the time the men asked—the committee asked you about a lawyer, did you have any other meetings with any employees with reference to any labor organization?

A. You mean later on?

Q. Yes.

2109 A. Yes.

Q. Well, as I recall it that was the first meeting then with the Independent Union, but the date I have not in my mind.

Q. April 23rd was that?

A. I haven't the slightest idea.

Q. What was that meeting, what took place?

A. Well, they came in and asked for the increase which I think all of them understood, the increase that had been discussed at the old Works Council meeting, the last Works Council meeting, and they understood that was to go out with the Works Council and that any new negotiations for increases would have to be made with the existing bargaining group.

They came in and asked again for a raise, and asked for the reinstatement of those three fellows that we had laid off. That was the first meeting I had with those fellows.

Q. Do you remember whether or not that was toward the end of April?

A. Well, it must have been toward the end of April because it came after the meeting at the hospital, quite some time, and after they had received recognition; so therefore it must have been toward the latter part of April.

Q. Now, at that meeting of April 26th—it was April 26th that occurred, the testimony shows here—did you agree to advance the date of the increase in the wages?

2110 A. Not at that meeting, no.

Q. You were asked to do so?

A. I don't think at that meeting, somebody asked me that at the first meeting under the hospital.

Q. Let's get back to that. I may have gotten it a little confused in my mind.

I want you to state all the conversation that you had at that meeting back under the hospital.

A. Well, there was a further conversation about this question of advancing the date. Someone asked me if we would

be willing to advance the date from the first of June, as originally intended before the Works Council went out—away before,—and then I agreed to that.

I said "As far as I am concerned, if it will make you feel any better, I will do that."

Q. Did anyone at that meeting state that if you would advance the date of the increase that it would undoubtedly keep the C. I. O. out of—or words to that effect?

A. I don't recall that statement having been made.

Q. What was the reason that you agreed to advance the effective date of the increase?

A. Well, simply because I thought it was a fairly reasonable request, and it was made in good faith and I was willing to show our good faith and go along to that extent.

Q. Now, going to the meeting of April 26th—that 2111 was really the meeting between you and the committee of the Independent Union.

A. That was with their board of directors as I recall.

Q. Board of directors of the Independent Union.

A. Yes, sir.

Q. They came in to make some request of you?

A. Yes, sir.

Q. And one of the requests was the reinstatement of three men.

A. That is right.

Q. Do you remember who those three men were?

A. Yes, two inspectors and a welder.

Q. What was the reason for their discharge if you know?

A. Well, at the time, that was Saturday morning when there was a great deal of agitation going on in the shop and we had a couple of fellows come to us and say that these men threatened them and coerced them into signing the C. I. O. cards and made an affidavit to that, and then we let those fellows go.

Q. Were you shown the affidavits?

A. Yes, sir.

Q. Were you satisfied in your own mind that these men had been threatened by advocates of the C. I. O. in your plant?

A. They were sworn affidavits, and I did not think the fellows would misrepresent to that extent.

Q. And on that basis you discharged these men.

A. Yes, sir.

Q. You yourself did that?

A. No, I did not.

Q. Or you ordered it to be done.

A. I did.

Q. Was this matter of the discharge of these men taken up with Mr. Clark of the Labor Relations Board?

A. Yes, Mr. Clark was immediately notified of the condition and supplied with the affidavits.

Q. Do you remember the conference had with Mr. Clark in his office, or rather the office of the National Labor Relations Board here in Milwaukee at which I was present?

A. I do.

Q. Did you or did you not make any statement to Mr. Clark with reference to the reinstatement of these three men?

A. As I recall that meeting Mr. Clark suggested it might be a good thing to take them back, and I think I told Mr. Clark that I would consider taking two back but I wasn't so sure about the third one, referring to Douglas, he is a welder, as there was one that I did not want to take back.

Q. Did you do anything about taking the men back until request was made on you by the directors of the Independent Union to take them back?

A. No, I did not.

2113 Q. Why not?

A. Well, I was not very anxious to take them back.

Q. Why did you accede to the request of the directors of the Independent Union to take them back?

A. Well, because I figured if those fellows wanted the boys back they were probably sincere about it, and if they were willing to forget the incident, why, I was.

Q. Did you want to take them back?

A. Not specially.

Q. Did you know whether or not they were members of the Independent Union at the time they requested you to take them back, the request to take them back was made by the directors?

A. No.

Q. Do you know today whether they are members of the Independent Union?

A. No, I do not.

Q. Would that make any difference to you?

A. No, sir.

Q. Do you remember whether at this conference with Mr. Clark, the matter of Kinch,—let's call it in re: Kinch, was discussed?

Mr. Rissman: Which Clark?

Q. (By Mr. Lamfrom.) Mr. Clark of the Labor Relations Board.

A. I don't recall that at all, Mr. Lamfrom.

2114 Q. Do you remember whether or not the matter of the Works Council was discussed with Mr. Clark?

A. Yes, it was.

Q. Do you remember what the substance of that conversation was?

A. I remember only furnishing one of the copies of our booklet to Mr. Clark, and it was either in a letter or a conversation that I got into afterwards, where he seemed to feel that the Council was pretty well set up.

That was the substance of what I remember there.

Q. Do you remember that later on I told you that I had a further—I had further discussed the question of these men, the Kinch matter and the Works Council with Mr. Clark and with Mr. Rissman?

A. Yes, I remember that.

Q. And did I convey to you what the substance of that meeting was?

A. I don't recall that now.

Q. You don't recall what it was.

A. No.

Q. Well, anyway, whatever transpired as a result of the meetings with Mr. Clark and later, on my meeting with Mr. Rissman and Mr. Clark, and a later meeting for the purpose of discussing the Works Council, nothing was done by the company with reference to the Kinch matter or the re-
2115 instatement of these men or anything respecting the Works Council.

A. No, not that I recall.

Q. Now, in addition to the reinstatement of these three men at the request of the directors of the Independent Union, was any matter discussed?

A. This wage matter.

Q. Yes, and what was the decision.

A. Well, we agreed to reinstate that wage agreement substantially as we had made it originally to the Works Council, with some few exceptions I think.

Q. You represented management in this meeting of April 26th?

A. I did.

Q. Was anybody present besides you from the management?

A. I don't remember that.

Q. How long did the meeting take?

A. Oh, I don't think I was down there for more than ten or fifteen minutes.

Q. In substance is that—is this what took place: The three directors came in, or were there more than three directors? Or how many?

A. There was quite a group, I don't know how many, I would say eight or ten, something like that.

Q. They made these requests upon you in writing?

A. They had a slip of paper there.

Q. Did they read it?

2116 A. Yes, they did.

Q. Or state them verbally.

A. No, they read from it.

Q. Had you had any information that this group was coming to see you before you received the request?

A. I don't remember whether they had asked me for an appointment or not, I don't recall.

Q. Did you make an appointment with them?

A. I don't recall that.

Q. In acceding to these requests, did you have any particular purpose in mind?

A. In acceding to them?

Q. Yes.

A. No.

Q. Did you think they were reasonable requests?

A. Yes, I did.

Q. Did you think that the requests were granted, or the requests were calculated to help establish friendly relations between the company and its employees?

A. Yes.

Q. Now, Mr. Falk, during the history of the Falk Corporation from its beginning, as you know it, up to date, have you had any strikes or lockouts, or walkouts, or labor disturbances?

A. The only one we ever had was in 1906.

2117 Q. And that was in a molders' strike.

A. That is right.

Q. Which took place at that time, and if I recollect the time, as I recollect that event here in Milwaukee, the strike

as far as the Falk Corporation, was concerned was a sympathetic strike.

A. Well, that is what I have been told; I was not in on the negotiations at the time, because I came back from school in the fall of that year, and that happened in the early part of the year, May; so I was not in on that, although I have been told that was substantially what the reason was.

Q. How long did that strike last?

A. Well, that went on for pretty near two years; I don't know that it really ever was officially called off, I don't know.

Q. Now, outside of that particular strike which naturally impeded production in the Falk Corporation, was there ever any impeding of production in the Falk Corporation to your knowledge by reason of any strike or walkout or lockout?

A. No, sir.

Q. After the—

Trial Examiner Batten: I don't suppose you are referring to the testimony of Mr. Green here in this hearing, that this controversy between the two unions lowered the production in the plant?

2118 Mr. Lamfrom: I am referring now to walkouts, strikes and lockouts. I expect to get to that point in a moment.

Trial Examiner Batten: I say, I was wondering whether you included in this, the definition of those terms.

Mr. Lamfrom: No, I am now confining my question to what is known as strikes, walkouts or lockouts.

The Witness: That was what I was confining my answer to.

Q. (By Mr. Lamfrom) Yes. So far as you know there hasn't been any.

A. No.

Q. Or any one of those labor manifestations except the molders strike in 1907.

A. That is right.

Q: Now, this agitation which took place in the plant to which several witnesses have testified, agitation for the C.I.O., the agitation for the Independent Union, impaired or impeded to some extent as I understand, the production of the Falk Corporation, did it not?

A. Bound to I should think.

Q. Now, aside from the impeding of production of the Falk Corporation resulting from that kind of agitation, to your knowledge has there ever been any impairment or im-

impeding of production of the Falk Corporation due to any labor trouble or disturbances of any kind?

1119 A. No.

Q. Did the impeding of production of the Falk Corporation at the time of the agitation recently in April slow up the shipment of goods of the Falk Corporation into interstate commerce?

A. Mr. Lamfrom, that is a rather difficult question to give a very positive answer to in a business of the type of ours. That Saturday morning when the difficulty arose it was very apparent that nobody was doing any work, that was the reason why we said we would close the plant at noon after we let those three men go.

We cannot measure our production in so many tractors a day or so many of this a day or that a day; we don't do very much of that type of work, so that unless you are familiar with it and right in the factory where you feel it, it is pretty hard to pin your information down so that it would be—

Q. What is your best judgment from your knowledge of the facts, of the situations as they existed at that time, as to whether or not it slowed—as to whether or not the slowing up of production in any material way affected the shipment of your goods out from Milwaukee to other points in the nation?

A. I think it very reasonable to say that when you get a group of men in the frame of mind that they were in 1220 there for a time, that their production is away off; I don't think there is any question about that.

Trial Examiner Batten: Well, that does not answer the question.

The Witness: Well, if it slows up production, Mr. Batten, it would undoubtedly slow up the shipments.

Q. Trial Examiner Batten: Well, I think that answers the question.

Q. (By Mr. Lamfrom.) What effect would you say as to whether or not the flow in of materials which the Falk Corporation uses in its business or did use at that time was slowed up or interfered with by reason of the agitation and the slowing down of production?

A. I wouldn't say it would affect that very much.

Q. For how long a time would you say the outflow of our manufactured products was interfered with or slowed down by reason of the agitation?

A. Well, it was going on in pretty good shape there for a couple of weeks as I recall it.

Q. In other words, it would be your judgment that the only effect upon the shipment of goods out of the plant to other points in the nation was interfered with for maybe a period of two weeks?

A. I would say that is about right.

Q. And to what extent would you say shipments were 2121 interfered with, I mean considering shipments of normal, of 100 per cent?

A. I don't think I could answer that question.

Q. But you are rather certain that for only a period of two weeks this interference took place?

A. I think so, I think that is substantially correct.

Q. You are rather certain, are you not, that the inflow of goods or materials in interstate commerce from the parties from whom you purchased your materials was not interfered with at all.

A. I would say that is right.

Mr. Lamfrom: I see it is 5 o'clock.

Trial Examiner Batten: Well, do you want to finish with Mr. Falk?

Mr. Lamfrom: I have an engagement at 5:30 tonight that I would like to be able to keep.

Trial Examiner Batten: There is no reason I had—

Mr. Lamfrom: I am perfectly agreeable to go on.

Trial Examiner Batten: Don't put this in the record.
(Discussion outside the record.)

Trial Examiner Batten: All right, 9 o'clock tomorrow morning.

(Whereupon, at 5 o'clock P. M. August 24th, 1937, the hearing was adjourned to 9 o'clock A. M. August 25th, 1937.)

2125 BEFORE THE NATIONAL LABOR RELATIONS BOARD.

* * (Caption—XIIC57 and XIIR85) * *

Room 409, Milwaukee County Court House,
Milwaukee, Wisconsin,
Wednesday, August 25, 1937.

The above-entitled matter came on for hearing, pursuant to adjournment, at 9:00 o'clock a. m.

Before:

James C. Batten, Trial Examiner.

Appearances:

Robert S. Rissman, and

S. G. Lippman, Attorneys on behalf of the National Labor Relations Board.

A. G. Goldberg, 511 Warner Building, Milwaukee, Wisconsin, appearing for International Union of Operating Engineers, Local 311.

2126 Giles F. Clark, of Alexander, Burke & Clark, 110 East Wisconsin, Milwaukee, Wisconsin, appearing for the Independent Union of Falk Employees.

Lamfrom, Tighe, Engelhard & Peck, by Leon B. Lamfrom, and

A. J. Engelhard, appearing for The Falk Corporation.

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Proceedings.

Mr. Lamfrom: Mr. Batten, I am handing you now the data you asked for yesterday from The Falk Corporation. The first data is contained in two sheets, Nos. 1 and 2, both dated August 24, 1937, and headed "Foremen and Assistant Foremen on Hourly Wage Payroll as of 4-23-37, 5-5-37, and 6-15-37." It consists of two sheets.

Do you desire to have it marked as one exhibit? I don't know what number that is, I have long since forgotten.

Mr. Rissman: The next Respondent's Exhibit number is 3.

Mr. Lamfrom: Respondent's Exhibit 8.

The next sheet is a list of the ex-Works Council members, who attended the meeting held on April 8th, 1937. The sheet is dated August 24, 1937, setting forth that no deduction was made from the pay of these men for the time spent at this meeting, in accordance with the provisions of the Works Council's articles and by-laws. All right?

Mr. Rissman: All right, Mr. Lamfrom.

Mr. Lamfrom: That will be Respondent's Exhibit 9.

Do you desire to see these now?

Trial Examiner Batten: If there is no objection, they will be received.

Mr. Rissman: No objection.

2128 (Thereupon, the documents above referred to, marked **RESPONDENT'S EXHIBITS NOS. 8 and 9**, were received in evidence.)

Mr. Lamfrom: I have the power house men here. If you desire to wait until Mr. Goldberg gets here, I will go on with the examination of Mr. Falk, although I would like to put these witnesses on the stand at as early a time as possible, to get them back to the plant.

Mr. Falk, will you resume?

HAROLD S. FALK, a witness called by and on behalf of the Respondent, having been previously duly sworn, resumed and testified further as follows:

Direct Examination (Continued).

Q. (By Mr. Lamfrom.) The last question, as I have it from the transcript furnished us by the unofficial reporter—the official reporter, the one that is here, not having the proceedings of last night—is:

“Q. And you are rather certain, are you not, that the inflow of goods or materials in interstate commerce from the parties from whom you purchase your materials is not interfered with at all?”

“A. I would say that is right.”

“Trial Examiner Batten: Do you want to finish with Mr. Falk tonight?” and so forth.

2129 Now, Mr. Falk, has the production of The Falk Corporation been hampered or interfered with since the days in April, which has been brought out in the testimony?

A. No.

Q. Is the production at the present time normal?

A. Yes.

Q. Are you working on shifts at the present time?

A. Yes.

Q. How many shifts?

A. In some departments two, and in some departments three.

Q. And there is no interruption of the inflow of raw materials from other States, due to any conditions in the plant respecting labor matters?

A. No.

Q. Is there any interruption in the outflow of your product to other States, due to any interruption or interference caused by labor matters?

A. No.

Q. How long has this condition of normality, as we shall call it, been in existence since April?

A. Well, right straight along, with perhaps the exception of that period that was testified to yesterday.

Q. That period that you testified to yesterday?

A. Yes.

Q. Are you anticipating any interruption in the production which would affect the outflow or inflow of materials in your plant?

A. No.

Trial Examiner Batten: I presume if these two organizations got to arguing again, you might anticipate it, might you not?

The Witness: Might, if they got to arguing, yes.

Mr. Lamfrom: Of course, that might happen at any time, to anybody, but we are talking now about the present conditions, if they were projected into the future.

Q. (By Mr. Lamfrom.) In your examination by Mr. Rissman, at the beginning of this hearing, Mr. Rissman asked you some questions with reference to your labor policy, referring to the company's labor policy, and he had referred to the written statement of your labor policy which you published in the plant, I think in June, based partly upon the pronouncement of the President of the United States in the automobile matter in 1934, and, in the course of that examination, he asked you this question:

"Q. Is that policy different, Mr. Falk, in any respect, from the policy previously pursued up to that time?"

He referred there in that question to the policy of the com-

pany immediately preceding the troubles which have been indicated in this case, and thereafter; and you answered?

2131 "A. Yes, I think it is."

And then he asked you this question that follows:

"Q. In what respect?"

and the record shows that you did not answer that question.

Now, will you answer the question now, in what respect the policy is different from the policy pursued by the company up to that time? Do you understand my question?

A. I think so.

Mr. Rissman: It is my question.

Mr. Lamfrom: No, it is my question now, I have taken it from you.

The Witness: A. Previous to that time, we, of course, were not bound by any law, and as a result we used our own judgment in matters of what we believed to be right and wrong.

Q. (By Trial Examiner Batten.) Prior to what time?

A. Prior to the enactment of the law, and this particular time that he spoke of.

Q. That is what I am interested in. Prior to what time?

A. The enactment of the Wagner law, in 1936.

Q. (By Mr. Lamfrom.) To put it this way, was your statement of policy, labor policy, which you published in June, a result of your feeling and thought as to your obligations and duties under the law of the United States, as it then stood?

2132 A. Yes.

Q. And in what respect had the law of the United States, as it then stood, changed your conception of your labor policy?

A. Well, in relation to the rights of the men to bargain collectively for wages, hours, and working conditions, I think that would cover it.

Q. Did it undergo any change as to the question of your obligation to bargain collectively with the men, through representatives of their own choosing?

A. Yes. We wanted to follow the law.

Q. Now, Mr. Falk, reference has been made to the labor policy of the company, as exemplified in your pronouncements, speeches or indications of other kinds, prior to the period of the legislation known as the Wagner Act, and I hand you here a copy of a letter written by you September 8, 1933, to Mr. F. A. Canfield, United States Department of Labor at

milwaukee, and ask you to peruse that copy, and refresh your memory as to its contents.

A. That letter was the result of an interview with Mr. Canfield at his request, I think in the Hotel Wisconsin, after the discharge of Aristo. I had reviewed it with him in his hotel room, and he asked me if I would reduce it to writing and present it to him, which I did.

Q. Now, in the letter which you wrote to Mr. Canfield, under the circumstances as detailed by you, did you state the labor policy of The Falk Corporation as was then practiced?

A. Yes, I think that second to the last paragraph would cover that pretty definitely.

Q. Now, will you read the second last paragraph in that letter?

A. (Reading):

"I explained to you our attitude towards men who are affiliated with Union organizations. While we run an open shop, we do not discriminate against men who belong to the union, unless they prove to be trouble-makers, in which event we would discharge Union or Non-Union alike. There have been a number of men in our employ at various times who belonged to the Unions and these men have enjoyed the same privileges as any of the others. As a further indication of our attitude, it may be of interest to note that, for many years we have employed a Union mason in our furnace and building maintenance work, when Non-Union men were readily available. In fact, we have in our employ a capable mason who does our concrete work who could, at any time, be used on mason work. A similar situation exists with our plumbing maintenance and repairs. We have for many years used the men from a Union contractor. There are also many Non-Union plumbers available here."

Q. Now, referring to the contents of the letter, other than our statement of policy, and to the Aristo matter, and refreshing your mind from the letter, what have you to say as to the reasons that Aristo was discharged? Inasmuch as that is in that letter, and as it refreshes your memory, I will deal with that subject at the same time.

Trial Examiner Batten: I presume you are going to make this letter an exhibit, are you not?

Mr. Lamfrom: Yes, but I just want the testimony of the witness as to the position of the company on the discharge of Aristo.

Q. (By Mr. Lamfrom.) Is his name Aristo?

A. Aristo.

I explained to Mr. Canfield at the time—

Q. (By Trial Examiner Batten.) The question is not what you explained to Mr. Canfield. The question is, why was he discharged.

Q. (By Mr. Lamfrom.) Yes. What do the paragraphs of the letter, the contents of the letter, show, refreshing your memory therefrom, to be the reasons for Aristo's discharge?

A. He was discharged for violating shop rules, and for leaving his place of work in order to get a drink of water at the power house, which was some 400 feet distant from 2135 the place that he worked at, and it was explained to him that if all of the men ran to the power house, we would have four or five hundred men walking back and forth from the plant all day long.

And then he got into an argument with the foreman, and there was insubordination there, and in addition to that, he used to come over in the office and peruse the waste paper basket every morning, representing to the janitor over in the office that such permission had been given him by me. He said he was looking for postage stamps, but I was pretty well satisfied in my mind that he was looking for such information as might be available through the waste paper basket.

Q. Information on what?

A. On anything that pertained to the company, or company affairs.

Q. Were all these reasons which you gave for the discharge of Aristo a matter of an accumulation that existed at the time he went to get the drink of water the 400 yards or 400 feet to the power house?

A. That's right.

Q. Did you approve of that discharge?

A. I did.

Q. You, in fact, discharged him, didn't you?

A. No, I didn't. I was with the foreman when he 2136 discharged him.

Q. And the reasons you have given are the reasons for his discharge?

A. Yes.

Q. And that is back in 1933?

A. Yes, September 8th.

Mr. Lamfrom: Mr. Batten, I will now offer this as an exhibit marked Respondent's Exhibit No. 10.

Mr. Rissman: I will object to the introduction of this document, if the Examiner please. It is self-serving.

We do not know the purpose for which it was written to the Department of Labor. We have no way of determining the basis on which the statements in the letter are made, and it serves no purpose in this hearing, tending to prove or disprove the issues in the case.

Mr. Lamfrom: I don't know what better evidence could be introduced at this time to show the policy of the company towards its employees and the Union questions involved; and it also is, in effect, a memorandum refreshing Mr. Falk's recollection as to the causes for the discharge of Aristo.

Trial Examiner Batten: Of course, Aristo's discharge is not an issue in the case.

Mr. Lamfrom: Except it is a part of the case.

Trial Examiner Batten: However, it was brought up here in the evidence, when Mr. Aristo was here, as to why 2137 he was discharged. It will be received for whatever value it has.

Mr. Rissman: I submit, further, that this, if it was a statement of the labor policy of the company, was in the nature of an explanation of the policy to the government representative.

Trial Examiner Batten: Well, I think if I read the letter in the light of all the evidence that is here, I can determine what relation it may have to the history of labor relations in the plant.

(Thereupon, the document above referred to, marked RESPONDENT'S EXHIBIT 10, was received in evidence.)

Q. (By Mr. Lamfrom.) What was the occasion for stating in this letter to Mr. Canfield the labor policy of the company?

A. Well, he and I had a discussion in the hotel room reviewing the whole situation, and I told him substantially that, and he asked me to put it in writing, therefore, I put in writing just a review of our conversation in the hotel room.

Q. When you say "the whole situation", what situation are you talking about?

A. The whole situation relating to Aristo, that was what he was after.

2138 That is, the question of your labor policy arose with reference to the Aristo matter?

A. It must have, because I tried to report to Mr. Canfield the conversation we had there.

Q. Was there any complaint which you recall Mr. Canfield

made about your general labor policy at that time, or was the matter confined to Aristo?

Trial Examiner Batten: Mr. Lamfrom, as far as the Examiner is concerned, I would prefer not to go into the conversation had with this man. It is apparently all covered in the letter. I do not presume Mr. Canfield is available?

Mr. Lamfrom: No, I don't know where he is.

Trial Examiner Batten: I mean, I would prefer not to go into other matters in connection with that.

Mr. Lamfrom: I see your idea.

Trial Examiner Batten: Because, as Mr. Falk says, the conversation or discussion is practically entirely covered in the letter. The thing is, I would hate to have develop here matters of conversation, and so forth, between these two gentlemen, when Mr. Canfield is not available—

Mr. Lamfrom: Yes.

Trial Examiner Batten: (Continuing.) —in any way with respect to it.

Mr. Lamfrom: The only point I was directing my 2139 question to was the idea that the government was not taking any position that the Falk labor policy was not the right kind of labor policy, but that this matter arose purely out of the discharge of Aristo.

Trial Examiner Batten: I assume the labor policy of The Falk Corporation was not in issue, that undoubtedly it arose incidental to Mr. Aristo's discharge.

Mr. Lamfrom: That is the idea.

Trial Examiner Batten: I assume that was it.

Mr. Lamfrom: Now, if you would step aside a moment, Mr. Goldberg is here, and we can put the power house employees on the stand.

(Witness withdrawn.)

CHARLES E. SCHNADER, a witness called for and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Lamfrom.) What is your name?

A. Charles E. Schnader.

Q. You are an engineer at The Falk Corporation?

A. Yes.

Q. And how long have you been in such employment?

A. With The Falk Corporation four years.

Q. And how old a man are you?

A. Sixty-seven.

2140 Q. Are you a licensed engineer?

A. Yes, sir.

Q. Are you a member of any labor organization?

A. Yes, sir.

Q. What organization do you belong to?

A. The American Federation of Labor.

Q. How long have you been a member of the American Federation of Labor?

A. Well, off and on, for the last forty years.

Q. Take the last "off", and the last "on", when did that happen?

A. Last March.

Q. You remember that during the month of March, there was some organization work by Mr. Kingsland and others of the Engineers Union among the men in the power house at The Falk Corporation?

A. Yes, sir.

Q. Were there some union meetings that you attended?

A. One.

Q. Was that in March or in April?

A. It was either March or April.

Q. And at that time you rejoined?

A. Yes, sir.

Q. And you have been a member of it ever since?

A. Yes, sir.

2141 Q. Now, let me ask you, have you ever been led to make a choice of whether or not you should belong to a labor organization by anything that Mr. Harold Falk has said to you at any time during your employment by The Falk Corporation?

A. No, sir.

Q. Have you been influenced in your determination or choice whether or not to belong to a labor organization by anything Mr. Falk has written to you, or which you have seen, respecting whether or not you desire to belong to a labor organization?

A. I was already a member when this correspondence was distributed to the employees of the power house.

Q. Do you remember that letter?

A. Yes, sir.

Q. I hand you Board's Exhibit No. 18, which is a letter dated April 16, 1937, to the employees of the power house, and ask you whether that is the letter that you just referred to?

A. That is the letter.

Q. Did you understand after you read that letter that the purpose of that was to influence you in the matter of your membership in the union?

Mr. Rissman: I object to the question, if the Examiner please. The letter is in evidence. The Board and the Examiner will be able to rule as to the intent or effect such 2142 a letter would have upon the workers.

Mr. Lamfrom: I think the point is here, he can state what his understanding was.

Trial Examiner Batten: I don't think under the conditions, I will permit him to answer the question. The letter is in evidence.

The other facts surrounding, what transpired, I am perfectly willing that evidence will be submitted to show what transpired after the letter, if anything, was sent. But as to what he thinks Mr. Falk's purpose was, I don't think he is qualified in any way to say what somebody else had in their mind when they wrote the letter. For that reason, I will sustain the objection.

I don't think this witness or any other witness is qualified to pass upon somebody else's purpose.

Q. (By Mr. Lamfrom.) What was the effect of this letter upon you with reference to your continuing to be a member of that organization, or to leave it?

A. It had no effect on me, because I was already a member.

Q. As a matter of fact, it didn't cause you to do one thing or the other, did it?

A. No, sir.

Q. You have remained a member ever since?

A. Yes, sir.

Q. Now, are you down at the power house during the 2143 working hours, at the time many of the other men are working?

A. My shift is from 8:00 in the morning until 4:00 in the afternoon, six days a week.

Q. And how many men are on the same shift with you?

A. Well, that varies. As a rule, there are seven, I believe. Sundays there is only two of us there; according to the day in the week; when the men get their regular offs Saturday and Sunday, there is less men there than any other time.

Q. Do you know all the men in the power house?

A. Yes, sir.

Q. Pretty well acquainted with them?

A. Yes, sir.

Q. Generally speaking, they are good friends, is that a fact?

A. Yes.

Q. Do you gentlemen in the power house talk together with reference to matters that arise concerning your labor relations with the company?

A. As a rule, I don't discuss the labor situation with anybody, because I believe that is a question that each one should decide for themselves. I don't consider that it is anybody's business what I do in the matter, and I don't want to interfere in anybody else's.

Q. Now then, did Mr. Harold Falk talk with you regarding the Engineers Union proposal to enter into a contract?

A. He accosted me one morning, I think it was the day after Kingsland was there, and he asked me if I was a member of the union. I told him I was, and he asked me—he said, "Do you think you can get more from bargaining through a union than you can individually?" I told him I didn't know.

Q. Was there anything else said by him or you, I mean, regarding this subject?

A. No. I have known Mr. Falk for the last thirty years, and we have often talked, but I don't remember just what was said at that time. That was the sum and substance of the thing; he wanted to know if I was a member, and I told him I was, and he wanted to know if I thought I could gain anything by the bargaining of the agent.

Q. Did Mr. Falk say anything to you that you understood to mean that you should stop being a member in the organization?

A. No, he did not.

Mr. Lamfrom: Take the witness.

Cross-Examination.

Q. (By Mr. Rissman) After this letter was distributed among the power house employees, Mr. Schnader, do you know if any of them withdrew their membership from the A. F. of L. organization?

2145 A. I was told that five requested—sent in a letter requesting their membership be withdrawn.

Q. Do you know how many were members before the letter was sent or distributed?

A. I believe there was fourteen that signified their intentions by signing an application card.

Q. Do you know how many are members now, or have partaken in the activities of Local 311?

A. One, besides myself.

Q. (By Mr. Goldberg) When you said that there were fourteen that signed application cards, you mean there were fourteen in addition to yourself and this other man?

A. No, fourteen altogether.

Q. Fourteen all told?

A. Yes.

Q. Out of how many?

A. Well, I understand there were two or three engineers on the locomotive cranes, and I believe there were fourteen—that would be seventeen men altogether, and everybody signed, I understand, with the exception of three.

Q. You feel there should be a separate bargaining unit for your type of employees in the power house?

A. I do.

Q. And who do you want to represent you?

A. Why, I have already signified that by joining the 2146 American Federation of Labor.

Q. The Operating Engineers Union, Local 311?

A. That is, provided there is any union bargaining done.

Q. You want that group to represent you?

A. Yes. If there is no union bargaining, then it is up to myself individually.

Q. In the conference with Mr. Falk, was that at his office?

A. It was in the power house.

Q. You were alone with him when you were talking to him?

A. The electrician was there when he first spoke to me, but he stepped aside, so that nobody else heard the conversation except Mr. Falk and myself.

Q. Did he express to you the same sentiments, did he make the statement that he was opposed to labor organizations?

A. He did not.

Q. He did not make that statement?

A. No. He told me he was satisfied if I thought I could get any better service through union organization bargaining than I could individually.

Q. You made it known right away, that you were an A. F. of L. member of long standing, and intended to remain one, did you not?

A. Absolutely.

Mr. Goldberg: That's all.

Mr. Lamfrom: That's all.

47 The Witness: That is, that I had previously been a member, but had just rejoined.

Mr. Rissman: That's all.

Q. (By Mr. Goldberg) That your membership carried over forty years?

A. Yes. I have been an honorary member of the Machinists Union since September 1916. When I was made superintendent, I was not allowed to carry a working card. I am also machinist, as well as an engineer, and I still hold that honorary membership in the A. F. of L.

Should I go back to work as a machinist, that card is good for reinstatement.

Trial Examiner Batten: Did you receive one of these letters, Exhibit 18?

Mr. Lamfrom: I just passed it back again.

Q. (By Trial Examiner Batten) You know what I mean?

A. Yes.

Q. In which it said, "We do not favor unions"?

A. Yes.

Q. Let me ask you this: After the receipt of that letter, would you feel as free to express your opinions and take an active part in labor organization as you would in a plant where you knew that the employer was in favor of a union; would you feel as free to carry on your activities?

A. Well, I wouldn't say that I would feel as free to discuss labor problems with men in a plant where it was not organized as I would if I was working in one that was organized, because I would know then that everybody would be in accord with unionism; when they are not all members, you don't know who you are talking to.

Q. What do you mean, you don't know who you are talking to?

A. You don't know whether your fellow-employee has the same opinion about organization that you have. I would not want to try and influence anybody to do anything contrary to their own best judgment. I always try and decide those things on their merits, and what they are going to do for me, and then go ahead with it, and I believe everybody should have that same privilege.

Mr. Lamfrom: Do you desire to ask any more questions?

Trial Examiner Batten: No.

Mr. Lamfrom: That's all.

Q. (By Mr. Goldberg) At least, you feel if there is to be anyone to bargain for you as an individual, you should have the right to vote for whom you want to bargain?

A. Absolutely.

Q. If there is going to be any election at all?

A. Absolutely.

Q. And a group of individuals doing the same type of work as you should be the only ones to be able to vote
2149 for the bargaining agent to represent that type of work?

A. Absolutely.

Mr. Goldberg. That's all.

Mr. Lamfrom: That's all.

Trial Examiner Batten: That's all.

(Witness excused.)

JOHN P. COADY, a witness called for and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Lamfrom) What is your name, sir?

A. John P. Coady.

Q. And what is your business, Mr. Coady?

A. Operating engineer.

Q. At The Falk Corporation?

A. At the Falk Corporation.

Q. How old a man are you?

A. Sixty-one.

Q. Are you a licensed engineer?

A. Yes, sir.

Q. How long have you been an employee of The Falk Corporation?

A. About sixteen years and five months.

Q. I suppose in that time, you have gotten to know Mr. Harold Falk, have you?

2150 A. I hope so.

Q. Are you a member of any labor organization?

A. No, sir.—I will withdraw that statement. I did join the Independent Order.

Q. You did join that?

A. Of Falk Employees.

Q. When did you join the Independent Union of Falk Employees, just approximately?

A. I think May.

Q. In May of this year?

A. I think so.

Q. Yes.

A. I can answer definitely in a moment.

Q. How did you happen to join? Well, go ahead, take your time.

A. Yes, the first month was May.

Q. Are you now a member of that organization?

A. I am.

Q. Have you been a member of any other labor organization?

A. I have not.

Q. Within the last year?

A. I have.

Q. Did you join the American Federation of Labor Engineers' Union?

A. I have not.

2151 Q. How did you happen to join the Independent Union?

A. Well, I felt that eventually it would come to some sort of an organization, and I felt that I preferred the Independent organization to the outside representation.

Q. For what reason?

A. I felt on account of working more directly with my fellow-men, and that they would understand our problems much better than outside representation.

Q. Have your relations with the Falk Corporation during your employment there been pleasant?

A. Very much so.

Q. Has Mr. Falk ever indicated to you whether or not he desired you to become a member of any labor organization or not to become a member of a labor organization?

A. He did not.

Q. Have you been influenced in your choice in joining the Independent Union by any member of The Falk Corporation? By that, I mean any management member.

A. I don't know of any influence, only my own view of the situation.

Q. Were you sought as a member by Mr. Kingsland or any other organizer of the American Federation Engineers Union?

A. I was visited by Mr. Santner.

Mr. Lamfrom: Mr. Santner. Mr. Kingsland, is he the secretary?

2152 Mr. Kingsland: No. He was organizer at that time.

Q. (By Mr. Lamfrom) Did you have a conversation with Mr. Santner?

A. I did.

Q. Did you or did you not state what your position was with reference to joining that organization?

A. Mr. Santner visited me at my home. May I tell this in my own way?

Q. Certainly.

A. Mr. Santner visited me in my home, and we talked a little while, and he stated the business that he had at hand, and I told him that I did not feel interested; and he wanted to know why, and I told him the treatment that I had always received from The Falk Corporation in my sixteen years or over of my employment had always been such that I felt that the organization could not benefit my position in any way whatever.

Q. (By Trial Examiner Batten) Do you think the Independent Union can benefit your position any?

A. Well, I felt that, as I said before, working there together, we could perhaps take our problems to each other in a more intimate manner.

Q. Do you think they can benefit you any?

A. May I answer that in my own way?

Q. You may answer this in any way.

2153 A. From the treatment that I have had from The Falk Corporation, I don't know that I could actually say that they could handle it.

Q. What did you join them for, then?

A. Well, because I thought, eventually, we would be unionized, and that you might as well come in, into the one you preferred, as to some other.

Q. What do you mean "eventually you would be unionized"?

A. Well, by the activities in the labor field today.

Q. (By Mr. Lamfrom) That is, you felt, if I understand your testimony, that if unionization was coming, you preferred to join the union that would be most agreeable to you?

A. That is my stand.

Mr. Lamfrom: Take the witness.

Cross-Examination.

Q. (By Mr. Rissman) You say in the sixteen and a half years you have worked at The Falk plant, they have always treated you properly?

A. Yes, sir.

Q. And you have been satisfied with the treatment you received?

A. I certainly have.

Q. In view of that feeling, you wouldn't do anything that would displease Mr. Falk, or the company, would you?

A. I don't know why I should.

2154 Q. Well, you wouldn't, would you?

A. Well, I don't know why I should do that. I have no reason within myself, that I know of.

Q. When did you join the Independent Union?

A. I think it was May.

Mr. Rissman: That's all.

Q. (By Mr. Goldberg) Did you know that fourteen of the men working in the power house, and also two working out in the yard, doing your type of work, out of the seventeen total employees, signed application cards in the International Union of Operating Engineers?

A. Did I? What time did you mean?

Q. At any time that you know of, that was the situation.

A. Well, I didn't know that.

Q. Do you know it now?

A. And I have not been convinced.

Q. When were you told that for the first time?

A. I think the first time I knew of it was when—about the time, I think, that Mr. Kingsland visited the office down there, and that is about the time I got the information.

Q. Who gave you that information?

A. That I couldn't say now.

Q. Did you talk to Mr. Phil Kingsland?

A. No.

2155 Q. Was it one of the men on the job?

A. Pardon?

Q. Was it one of the men on the job that told you that?

A. No. I think it came to me some way through Mr. Kingsland informing Mr. Falk that fourteen of them had signed up.

Q. And then did Mr. Falk tell you that?

A. I couldn't say who told me, it doesn't come to me at all right now who did tell me, I can't answer that question truthfully.

Q. About that time, did you talk to Mr. Falk concerning joining or refraining from joining the union?

A. Mr. Falk and I had a conversation, yes.

Q. Where did you have that conversation?

A. Over in the power house.

Q. And when was that?

A. Well, I can't just state exactly when that was, but it was just about the time—well, it was shortly after the visit of Mr. Kingsland.

Q. How do you know that Mr. Kingsland visited there?

A. Well, in the first place, we were told that he visited there, and that card he sent out for us to come down to the Eagles' Hall on that particular Sunday for a meeting.

Q. Was it before the notice was posted in the power house by Mr. Falk, stating the position of The Falk Corporation?

2156 Mr. Lamfrom: I think the last time you asked that question, I indicated there is no evidence that any notice was posted in the power house. These letters were mailed to all these men:

Mr. Goldberg: No, it wasn't mailed.

Trial Examiner Batten: It was delivered by messenger, as I recall.

Mr. Engelhard: It was not posted, however, in the power house.

Mr. Goldberg: Thank you. All right,

Q. (By Mr. Goldberg) Was it before the time that this letter or statement or policy of the company was delivered to you?

A. Yes.

Q. And what was the conversation, what was said by Mr. Falk, you can just repeat it.

A. To the best of my memory, Mr. Falk came in and told me that Mr. Kingsland had visited over there, and I think that was when I really had the information, now, that so many of the men had expressed their wish to join the American Federation of Labor, and he told me that we fellows in the power house could join any organization we pleased, that he would have nothing to say about it at all, that it was up to us. The only thing he wanted to know was, did we want

an organization, and if so, he would know how to deal, 157 or he would know then that he should deal with Mr. Kingsland, but at the present time he wasn't—that is; e hadn't the information that we in the power house wanted n organization, and therefore, he wanted us to tell the truth, nd if we did, it would be all right with him, and if we didn't, would be all right with him, but he didn't want to go out- de and bargain unless we wished him to do so; that it was ntirely up to us.

Q. Did you then tell Mr. Falk that you had not signed?

A. I did.

Q. And did Mr. Falk also ask you whether you thought ou could get more out of the corporation by joining the nion, or staying out of the union?

A. I don't think he asked me that question.

Q. Did he again make the statement, as he did in that tter, that he was against unions?

A. He never made that to me.

Mr. Lamfrom: Just a minute. The letter doesn't say that t all.

Trial Examiner Batten: It says he doesn't favor unions.

Mr. Lamfrom: No. It says he does not favor a union.

Mr. Goldberg: "A union"?

Mr. Lamfrom: Yes.

Q. (By Mr. Goldberg) Did he make that statement, that "I" or "Falk Corporation, do not favor a union?"

158 A. You mean orally, or in the letter?

Q. No, did he again make it in this conversation with ou?

A. He did not.

Q. Did you ever again have any other conversation with r: Falk after that concerning joining or refraining from ining a union?

A. Not to my knowledge.

Q. You stated in your testimony, I guess Mr. Lamfrom uestioned you, that you felt that there was going to be or- nization there, and you had to get into one union or another, e organization or another, isn't that true?

A. I don't like that word "had".

Q. Well, how did you put it to Mr. Lamfrom?

A. I put it to him, I think, that eventually there would be organization; and I wanted to join the organization which preferred, that I thought would be to my interest and to liking.

Q. When you say "eventually" you felt there would be an organization, (do you mean that, among other organizations, there would be the Operating Engineers in that plant, due to the fact that fourteen of your people had signed applications to that organization?)

A. Well, that is a pretty hard question to answer.

Q. It is not so hard. Don't you have that in mind?

A. Read that question, please.

2159 Mr. Goldberg: Will the reporter read it?

(Question read by the reporter.)

Mr. Engelhard: I submit, it is rather difficult for any man to answer that question "yes" or "no".

Mr. Goldberg: I didn't ask him to answer it "yes" or "no".

Q. (By Mr. Goldberg) Answer it in your own way.

Trial Examiner Batten: I assume the question is this:

Q. (By Trial Examiner Batten) Whether you had in mind the fact that fourteen of your fellow-workers had already indicated a desire to belong to the Operating Engineers. Did that fact influence you in joining the Independent Association?

A. No, I think not.

Q. (By Mr. Goldberg) But that was one of the indications that eventually there was going to be organization in the plant, isn't that true?

A. Well, every other plant was organizing, and I felt that eventually it would come to our plant.

Q. You have been working with the engineers in the plant for a number of years?

A. I have.

Q. Had you discussed labor organizations with those men?

A. I couldn't say that I did.

Q. Have you never discussed the formation of a
2160 union at The Falk Corporation, either on the premises or off the premises, in all the time that you were employed at the company?

A. Well, there may have been some little talks, but I don't know just now whether I could collect those talks or not, because I didn't want to influence those men one way or the other, I thought that they should know what they wanted.

Q. Did any of them try to influence you?

A. They didn't that I know of.

Q. Hadn't there been any even loose discussion about?

unions among the men, either on the premises or off the premises, within the last six months?

A. Of course, I just said I think I had general talks, but I don't think I could collect those talks now, to bring them out to you clearly.

Q. On how many occasions do you believe you had any type of discussion concerning the formation of a union, among you men at The Falk Corporation within the last six months?

A. I don't think that I ever really got into a discussion on the formation of a union in The Falk Corporation.

Q. Did you ever overhear any other men discussing the formation of a union?

A. No.

Q. In the last six months?

2161 A. I don't think I did, I think I had better answer that question that way, because of this reason: No one had approached me, and no one had ever informed me that the union was being formed.

Q. When was the first time Mr. Santner approached you?

A. May I ask when the Independent organization had the meeting, the Sunday afternoon at the North Ave Auditorium? Mr. Lamfrom: That was April 18th.

The Witness: Perhaps a couple of weeks before that, something like that. I will not state that definitely, but to my recollection, it must have been somewhere just a little before that, that Santner visited me.

Q. (By Mr. Goldberg.) At your home?

A. At my home.

Q. Had he been out there on other occasions when you were not home, that was reported to you?

A. Not to my knowledge.

Q. Is that the only time you talked to Santner?

A. I talked to him in the afternoon, after the Independent meeting at the North Avenue Auditorium, he was on the street there, and I had a talk with him again.

Q. What was the nature of that conversation?

A. The nature of the conversation was something of this nature: That I stated, at my age, and the like of that, that I couldn't see where the union could do any better for
2162 me than my company was doing already. And he said something, if I remember correctly, about I should make a sacrifice, and I told him I thought I was getting too old to make a sacrifice, that I felt I should look out for myself and

I told him that I had nothing against his organization personally, but I did not feel at the present time that I could be benefited by joining.

Q. Did you have in mind that Mr. Falk had issued that statement, in which he said that the company was not in favor of the union?

A. I don't think that had any influence on me, whatever.

Q. Did you call to the attention of the individuals at the Independent meeting that Mr. Falk had made that statement that he was against the union—not in favor of a union?

A. No.

Q. Did anyone make that statement?

A. That I cannot say.

Q. Was there any discussion concerning whether Mr. Falk had changed his policy with regard to not being in favor of a union, as it applied to your Independent Union?

A. I can't answer that question. I must say that I don't know. If I remember correctly, there was considerable confusion, and I cannot say what statements.

Q. Did you consider whether or not you were too old 2163 to join the Independent, with regard to gaining benefits, at your age?

A. Well, I don't know that benefits influenced; that is, actual benefits, I don't think at that time that that really influenced. As I said before, I felt if we had our own little organization, that it would be more intimate, and that we could bargain ourselves perhaps to some better advantage than from the outside. That was my opinion, I may be wrong, of course, but that was my opinion.

Q. Now then, most of your employees are not operating engineers, or engaged in the type of work that you do, is that true?

A. Pardon?

Q. Most of your employees are not operating engineers, nor are they engaged in the type of work that you perform?

A. No.

Q. Don't you think that your little group, massed together, could more effectively deal with the management concerning operating conditions than a group taking in office help, draftsmen, the mass of employees, among your group?

A. I still feel, as a group of employees in one plant, that we would be just as well off as if we were represented by outside representation.

Q. (By Trial Examiner Batten.) You are in favor, 2164 then, of an industrial union; is that it? A union which takes in all the employees of one plant, in one organization?

A. That is, you mean in the one plant where I work?

Q. Yes.

A. I think I do.

Mr. Lamfrom: That is, he does not say he is in favor of an industrial union.

The Witness: No.

Mr. Lamfrom: He says he is in favor of a plant union.

Trial Examiner Batten: I say "industrial union"; in the sense that everybody accepts it, and that is, that all the employees in one plant should belong to one organization, whatever you call it.

Mr. Lamfrom: That is a plant industrial union.

Trial Examiner Batten: I say, that is commonly termed, as I understand it, as an industrial union; "industrial", meaning all of these employees in a particular plant, belonging to one organization, without any reference to any affiliation. I did not mean to imply that that would mean affiliation with them.

Mr. Lamfrom: No, I understand.

Q. (By Mr. Goldberg.) In reading Mr. Falk's letter, in which he says he was not in favor of a union, did you interpret that to mean that he was also against an Independent Union?

2165 A. Well, if I may tell you the truth—

Q. That is what we want.

A. (Continuing.) —I don't think what was in that letter influenced me one particle, one way or the other.

Trial Examiner Batten: That is not the question.

Mr. Goldberg: Just answer that. Read the question. (Question read by the reporter.)

Mr. Engelhard: It seems to me that when we asked questions of that sort sometime ago, they were objected to, and objection sustained under the rule that the men could not interpret the letter.

Now, I object to the question as being improper, asking this man's opinion.

Trial Examiner Batten: I don't think the remarks are called for with which you opened your objection. If you would make your objection first, and give the Examiner an opportunity to make a ruling, without implying here that the

Mr. Engelhard: No, I didn't mean that, your Honor.

Trial Examiner Batten: I don't think those remarks are called for.

Mr. Engelhard: My remarks are not directed towards the Examiner. They are directed towards counsel.

Trial Examiner Batten: If you object first, Mr. Engelhard, I will be glad to rule on your objection.

2166 Mr. Engelhard: I am objecting, your Honor.

Mr. Lamfrom: He just made those remarks, Mr. Batten, as directed against the methods of counsel.

Trial Examiner Batten: Well, he made that statement.

Mr. Lamfrom: May I finish? He had no idea of referring to anything about you.

Trial Examiner Batten: Well, I—

Mr. Lamfrom: No, he didn't.

Trial Examiner Batten: (Continuing.) —I don't think it was at all necessary to call attention to the fact that a ruling had been made on a question in a similar way, before making the objection.

Mr. Lamfrom: I think that is perfectly permissible. It seems to me that counsel must pay attention to rulings which are made in their examination, and the rulings which should be made in other examination.

Trial Examiner Batten: I think the Examiner should have an opportunity to hear an objection, and rule on it.

Mr. Lamfrom: The only point I want to make is that Mr. Engelhard had no intention, as I know him as a lawyer, of inferring that your rulings are being questioned.

Trial Examiner Batten: I didn't say questioned.

Mr. Lamfrom: He is not that kind of a man.

Trial Examiner Batten: I didn't say questioned. I simply say, he should have made the objection without
2167 the preliminary statement.

Mr. Engelhard: I submit that I could have done that.

Trial Examiner Batten: And I still take the position that I could have ruled on the objection without the preliminary remarks.

Mr. Engelhard: I say, I submit I could have done that, but I don't want any inference made here.

Trial Examiner Batten: If you will state your objection, I will rule on it.

Mr. Goldberg: I will reframe the question.

Mr. Lamfrom: I don't think counsel on the other side, knowing us the years he has known us, would insinuate that would you?

Mr. Goldberg: No.

Trial Examiner Batten: The Examiner is not insinuating anything. I simply request for an opportunity to rule on an objection.

Mr. Lamfrom: And there, again, you are inferring something. I said counsel, counsel would not insinuate, not you. I did not insinuate that.

Mr. Goldberg: I think we have been going for a week and a half, and everybody is a little on edge. I think I recognize the fact that the question is bad, and is subject to objection, and I will reframe it, if I may be permitted, Mr. Examiner.

2168 Trial Examiner Batten: You may do so.

Q. (By Mr. Goldberg) Mr. Coady, how did you interpret that letter with regard to The Falk Corporation being opposed to an Independent Union, by what was said in that very first line of that letter, which read—have you got the exact wording?

Mr. Lamfrom: "We do not favor a union."

Mr. Goldberg: "We do not favor a union"?

Mr. Lamfrom: "We do not favor a union."

Q. (By Mr. Goldberg)—"We do not favor a union."

A. Was that the first line in the letter?

Q. Just the first line.

Mr. Engelhard: Let him read the letter, and see what they have to say about it.

The Witness: A. I don't think I remember the letter.

Mr. Lamfrom: Here is Exhibit 18, there is the letter. You will note—I don't know whether it is first or second, it looks like the eighth line.

Mr. Goldberg: Well, No. 1.

The Witness: A. I can only answer that question truthfully, that when I read that, again, it had no influence on me at all, and I don't think I paid very much attention even to the whole letter. I read it and set it down, and let it go.

Q. (By Mr. Goldberg) When you read that, didn't
2169 you get the impression that the company was opposed to the International Union of Operating Engineers?

A. I don't think it had a bit of influence on me one way or the other, if I remember correctly.

Q. Just answer the question.

A. I can't answer that question "yes" or "no".

Q. Is the company in the habit of putting out numerous bulletins to the power house?

A. Bulletins come out.

Q. How often?

A. I can't say. I very seldom read them.

Q. You seldom read them?

A. Very seldom.

Q. So far as you are concerned, they could quit putting out bulletins?

A. Absolutely.

Q. Does Mr. Falk come and talk to you quite often?

A. No.

Q. How many times have you spoken to Mr. Falk in the last six months?

A. Do you mean, just bid him the time of day, or a conversation?

Q. Conversation.

A. Well, I think perhaps we have had a conversation maybe three times.

2170 Q. In the last six months?

A. Yes.

Q. And how many of those conversations were with regard to joining or refraining from joining a union?

A. Only the one that came in, after Mr. Kingsland had visited.

Q. You place importance on conferences with Mr. Falk, do you not?

A. Please state the question again.

Mr. Goldberg: Read the question.

(Question read by the reporter.)

The Witness: A. Well, importance? Do you mean about our work?

Q. (By Mr. Goldberg.) No, on the fact that he comes up and talks to you.

A. No.

Q. He doesn't just drop in casually, does he?

A. Mr. Falk very seldom has anything to do with me. He goes to the chief engineer, does his talking, and perhaps would bid me the time of day, and go on. His entering the plant does not have any influence on me at all.

Q. You have no other engineers who are members of the Independent Union of Falk Employees?

A. One.

Q. Do you know whether he is a member of that?

2171 A. Pardon me?

Q. You don't know that, whether he is not a member?

A. He is not a member.

Q. Didn't it seem rather strange that Mr. Falk would approach you personally, rather than to have the chief engineer approach you, on this subject?

A. No.

Q. Even though he did have these few conversations with you?

A. I didn't think that at all.

Q. You placed no importance on that?

A. The only importance I placed on that conversation was that Mr. Falk came to us individually to know what we wanted him to do.

Q. Didn't it please you that Mr. Falk took that individual interest in you?

A. I don't know that it did.

Q. It had no impression on you?

A. I don't think so.

Q. No more impression than these numerous bulletins that you do not read?

A. Well, I can't say that it had any impression on me.

Mr. Goldberg: That's all.

Trial Examiner Batten: Just a minute, please.

Mr. Clark?

2172—Q. (By Mr. Clark.) Mr. Coady, you said you saw Mr. Santner the day of the meeting at the North Avenue Auditorium. Where was he when you saw him?

A. Down on the street.

Q. He had been at the meeting, had he?

A. I can't say.

Q. How close to the hall was he?

A. Well, I would say right in front of the building. His car—I think it was his car—was parked there, and he was standing near the car as I came out.

Mr. Clark: That's all.

Mr. Lamfrom: May we have just a short recess?

Trial Examiner Batten: Yes. We will recess ten minutes.

(A short recess was thereupon taken.)

(Witness excused.)

WILLIAM W. SIVRIGHT, a witness called for and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Lamfrom.) Your full name, Mr. Sivright?

A. William W. Sivright.

Q. How old a man are you?

A. Sixty-nine.

Q. Are you an employee of The Falk Corporation?

2173 A. Operating engineer for The Falk Corporation.

Q. How long have you been in such employment?

A. Four years.

Q. Was that your first employment with The Falk Corporation?

A. My first employment.

Q. Are you a member of a labor organization?

A. I am not.

Q. Have you ever been a member of a labor organization?

A. I have not.

Q. You were not one of the men that signed up with the Independent Union of the American Federation of Labor?

A. I signed an application card in '32, 1932.

Q. What happened?

A. I was employed at a laundry at that time, and I got out of the position, so I failed to join.

Q. You did not sign an application to the union in March or April of this year?

A. I did not.

Q. Are you a member of the Independent Union?

A. No, sir.

Q. Has Mr. Harold Falk ever talked to you about unions?

A. Why, we had one conversation one evening, along about 5:00 o'clock in the evening, I guess, close to it.

Q. When was it, about?

2174 A. That was along, I think, the first week in April; I believe it was.

Q. Did you receive one of these postals, like the one I am handing you, Exhibit No. 19, in April, from the I. U. of O. E. No. 311?

A. I believe I did receive such a card, yes, sir.

Q. Was the conversation that you had with Mr. Falk at or about that time?

- A. About that time.
- Q. Where did the conversation take place?
- A. In his office.
- Q. Did he call you to his office?
- A. He did.
- Q. What time of day was it?
- A. About 5:00 o'clock in the evening.
- Q. After or during working hours?
- A. It was just after I went on duty.
- Q. Just after you went on duty?
- A. I went on at 4:00 o'clock.
- Q. State what the substance of the conversation was, what Mr. Falk said, and what you said.
- A. He called me over to the office, and I came in. He said, "Are you afraid of me?" I said, "No, sir, I am not afraid of you." He said, "I am glad to hear it." He said, "I understand that little letter over there scared you."
- 175 I said, "It didn't scare me none whatever."
- Q. Just a minute.
- Mr. Rissman: Let him give the conversation.
- Mr. Lamfrom: Yes, I want to finish it.
- Q. (By Mr. Lamfrom.) He said something, you said, asking you about whether a letter scared you?
- A. Yes.
- Q. I show you Exhibit No. 18, and ask you whether that is a copy of the letter which you understand he referred to?
- A. Yes, sir.
- Q. Now, go ahead and state the conversation.
- A. He says, "What do you fellows want over there?" He said, "Do you want Mr. Kingsland to represent you as your bargaining agent, or what?"
- And I told him that I was undecided, and I said I would like to have him call a meeting of the boys, to get an agreement among the men who worked for the power house plant, and he said that was out of his jurisdiction, he had no authority to do anything of that kind. That was the long and short of the conversation we had.
- Q. In determining whether you should or should not join a labor organization, did anything that Mr. Falk ever said to you affect your choice?
- A. No, sir.
- Q. Did the letter, which is Exhibit 18, in any manner
- 176 affect your choice as to whether you would belong to a labor organization?

A. No, sir.

Q. Has anything that any of the officials have said, if they have said anything, of the Falk Corporation, besides Harold Falk, in any manner influenced you in coming to a conclusion as to whether or not you desired to join a labor organization?

A. No, sir.

Q. Whom do you desire to have represent you in collective bargaining with The Falk Corporation?

A. The employees of the power house.

Q. The employees themselves?

A. The employees themselves.

Q. By that, do I understand that you do not want to have the Engineers Union represent you?

A. Well, I couldn't say that in particular.

Q. What do you mean, the employees? You mean that division known as the power house to be a separate division for representation?

A. Yes, sir.

Q. Have you any choice as to who should represent you, the union known as the American Federation of Labor Union, or the Independent Union of Falk Employees?

A. Well, I don't think that any union should represent us.

2177 Mr. Rissman: May I have that answer?

Mr. Lamfrom: Yes. He said he doesn't think any union should represent him.

Q. (By Mr. Lamfrom.) Do you feel you can get from the company as favorable wages, hours and working conditions, by representing yourselves in collective bargaining with The Falk Corporation, as if the American Federation of Labor Union represented you?

A. I do.

Q. Do you think you can get as favorable results on the same subjects if you represent yourselves as if the Independent Union represented you?

A. I do.

Q. Have you anything in your mind which makes you oppose labor organizations?

A. No.

Q. Do you believe that a man in your situation, as an employee of The Falk Corporation, should be free to determine whether or not he desired to be represented in collective bargaining by an organization, or by himself and his associates in his employment?

A. I think by myself and associates in the power plant.

Q. That is, you feel you should be free to determine that question for yourselves?

A. Yes, sir.

2178 Q. Without any influence on the part of an employer?

A. Yes, sir.

Q. And without any influence on the part of outsiders?

A. Yes, sir.

Q. Or anybody else?

A. Yes, sir.

Q. Is that correct?

A. Yes.

Q. That is, you believe that is a matter for your own self-determination?

A. I do.

Q. And is that the course that has led you to come to the conclusion that you have come to?

A. Yes, sir.

Mr. Lamfrom: Take the witness.

Cross-Examination.

Q. (By Mr. Goldberg.) Have you ever belonged to any labor union?

A. I have not.

Q. Did you ever sign an application card for membership in any labor union?

A. Yes, sir.

Q. You signed an application for membership in the International Union of Operating Engineers, Local 311, in 1933, did you not?

2179 A. In 1932 or '33, I can't just recall it to my memory now.

Q. At that time, you lived at 2845 North Forty-Fifth Street?

A. Yes, sir.

Q. You were employed at that time by the New Way Service Laundry, weren't you?

A. Yes, sir.

Q. And do you remember how much you paid down with the signing of your application card?

A. One dollar.

Q. One dollar, wasn't it?

A. Yes, sir.

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Q. When did you discontinue your employment at the New Way Service Laundry?

A. Why, I couldn't recall it to memory just at present.

Q. Was it shortly after the signing of the application card?

A. Yes.

Q. When did you go to work for The Falk Corporation?

A. About four years ago, I don't recall the date right now.

Q. Had you been unemployed for any period of time prior to 1933?

A. Yes.

2180 Q. For what period of time?

A. About three months, I think it was, something like that.

Q. Between 1929 and 1933, was that the total unemployment?

A. I think it was about that, three or four months.

Q. You are the oldest man on the job at The Falk Corporation, are you not?

A. I think I am.

Mr. Lamfrom: You mean in the power house, Mr. Goldberg?

Mr. Goldberg: In the power house.

The Witness: In the power house.

Q. (By Mr. Goldberg.) The oldest man in age?

A. In years.

Q. Not in years of service?

A. No. In years.

Q. And in length of service, you are one of the youngest men, are you not?

A. Yes, sir.

Q. Do you know of anyone that has worked there a shorter period of time than you?

A. Mr. Schnader.

Q. Yes.

A. He and I went there the same month.

Q. In March of this year, that is, on March 27th, 1937, you paid another \$2.00 on account of your application fee for membership in the International Union of Operating Engineers?

2181 A. I did.

Q. Isn't that true?

A. I did.

Q. You paid that to Bill Santner?

A. Yes, sir.

Q. And that signified your desire to proceed into membership into the Operating Engineers Union, isn't that true?

A. Yes.

Q. Now, between that date and the present time, you have had a change of heart, or a change of mind, isn't that true?

A. Yes, sir.

Q. What caused you to change your mind?

A. Because we didn't have enough members that would sign the application, that attended the meeting, that lived up to their obligations, so I thought as long as there were only two or three of us in the power plant belonged to that union, that no union could benefit us whatever.

Q. I see. Is that the only reason?

A. Yes, sir.

Q. What meetings did you attend of the union?

A. Sir?

Q. What meetings did you attend of the union?

A. I didn't attend any union meetings.

82 Q. Then how do you know there were only two or three attending the meetings?

A. They had a kind of a gathering down there, and there was only six of the whole power plant went to that gathering.

Q. Did you go to the gathering?

A. I did.

Q. When was that held, if you know?

A. March 27th.

Q. That is the date you signed your application?

A. No, sir. That is the date—

Q. Pardon me. I mean the date you paid the \$2.00?

A. Yes, sir.

Q. Do you know that on March 26th, James McCarthy signed up for the union?

A. I was told he did.

Q. Who are the other individuals that attended that gathering?

A. There was Charles Schnader, William Brandt, Martin Messman, and George Achterberg.

Q. Was Charles Chase there?

A. Not to my knowledge. I don't know the gentleman.

Q. Or Martin Gaherty?

A. No.

Q. Did you talk to either Chase or Gaherty, and inquire whether they had signed up for the union?

53 A. I did not.

Q. Did you talk to anybody around there, other than

these men that attended that gathering, with regard to whether they had signed application cards for the union?

A. I believe I talked to one.

Q. Who did you talk to?

A. That was John Yunkovich.

Q. Did he tell you that he had signed?

A. He told me that he had signed his application, and paid \$1.00.

Q. Wasn't he at that February 27th gathering?

A. No, sir.

Q. He paid his \$1.00 on February 27th—oh, pardon me, March. Now, didn't you gentlemen discuss labor organizations amongst yourselves?

A. At that time? At about that time you mean?

Q. About that time.

A. No, sir; not during working hours.

Q. Well, during the noon hour?

A. No, sir.

Q. Was there a sort of an understanding that unions were to be considered very quietly and carefully, and not spoken of openly among the men?

A. Why, I couldn't say as to that.

Q. Was that your feeling?

2184 A. That was my feeling, at least.

Q. And why did you feel that way?

A. Well, I thought if we would get them all organized together, and get everyone of them, we could do bargaining, outside of their working hours.

Q. You agree, do you not, that if all of you men joined together, you could effectively bargain for the men working in the power plant?

A. I was under that impression.

Q. And there is strength in unity, isn't there? That is your feeling?

A. Yes.

Q. Don't you think it would be a desirable situation if all the men could get together and act as a group in the power plant?

A. In one power plant alone, yes.

Q. Don't you think that if even fourteen out of the seventeen got together, and stuck together, that it would be an effective way to deal with the employer?

A. Why, individually, yes.

Q. No, I say, if the fourteen got together, and agreed to

stick in a union, don't you think that would be an effective way of dealing with the employer, for people working merely in the power plant?

A. Possibly.

185 Q. It was told to you that there were fourteen men who had signed application cards, was it not?

A. It was.

Q. Who told you that?

A. Mr. Santner, I believe his name is.

Q. Did he tell you who those fourteen were?

A. He did.

Q. Did he discuss with you the possibility of getting the three men who had stayed out of the fold, as it were?

A. I believe he did.

Q. And did you express any plan or any thought as to how to get those men into the group?

A. As I recall it to mind, I did.

Q. You thought it would be desirable to get them?

A. Yes.

Q. If those fourteen had stuck, you would have stuck, wouldn't you? That is, if the other thirteen would have stuck, you would have been the fourteenth to stay with the union?

A. I don't think I would.

Q. You don't think so?

A. No.

Q. Assuming that there had not been any circular of the type that was passed out. Were you approached by Mr. Falk?

A. I was.

186 Q. Assume Mr. Falk had not approached you, wouldn't you have stayed then?

A. No.

Q. What made you change your mind?

A. Because I didn't think they could benefit me. I think I could do my bargaining for \$30.00 a year myself.

Q. Did you ever try, in the four years you have been employed at The Falk Corporation, did you ever go to the employer to bargain?

A. No, sir.

Q. When you were hired, you were given a certain scale wages?

A. Yes, sir.

Q. You have worked under either that scale, or any other

scale that was given you, of your own volition, by the employer, since, haven't you?

A. Yes.

Q. Did you ever go to him and discuss working conditions?

A. No, sir.

Q. Did you ever go to your employer and discuss the hours of service?

A. No.

Q. And still you feel you have been bargaining all this time, don't you?

A. I can't say I have been bargaining.

2187 Q. In other words, summing this thing up, isn't this the situation: At your age you feel that you have to be rather cautious in telling the employer what conditions you want to work under, isn't that true?

A. No, I don't think so.

Q. Well, isn't it your impression that if you had to leave The Falk Corporation, and had to look for a job, somewhere else, it would be, at your age, rather hard to get a new job?

A. It would be kind of hard for me at my age, I think.

Q. You have taken that into consideration?

A. Yes, sir.

Q. Yes. Now, you spoke to Mr. Falk after you paid your \$2.00 to the union, isn't that true?

A. I think it is, sir.

Q. Where did you talk to Mr. Falk?

A. In his office.

Q. Did he call you in there?

A. He did.

Q. Had you ever been called into his office prior to that day?

A. No, sir.

Q. Were you impressed by the fact that you were called in there?

A. What was the question again, please?

218 Q. I say, were you impressed with the fact that you were called into Mr. Falk's office?

A. Why, I don't know that I was impressed with it, no.

Q. Were you told before you were sent, before going into the office, what you were being called into the office for?

A. No, sir.

Q. A lot of thoughts ran through your mind as to what might happen to you, isn't that true?

A. Yes, sir.

Q. Even the fear you might have done something wrong, and were being let out of your job, isn't that right?

A. Yes, sir.

Q. Are you a married man?

A. Yes, sir, I am.

Q. Have you children?

A. I do.

Q. Do you have to support them, or are they self-supporting?

A. They are self-supporting.

Q. You are not a man of means, I take it, are you?

A. No, sir.

Q. You have to work for a living?

A. I do.

Q. And that job means a lot to you?

A. It does.

Q. And you had great fear that, in the event you
2189 were going to be let out of your job, you would be in a bad way, on that particular occasion, isn't that one of the thoughts that ran through your mind?

A. Why, I will say if I lost my position there, it would be kind of hard for me to get another one.

Q. Are there any other thoughts that ran through your mind, that I have not covered, that you want to state here?

A. No.

Q. When you got in there, who opened the conversation?

A. Mr. Falk.

Q. Was anyone else present?

A. Mr. John Yankovich, and I think Mr. Falk's assistant.

Q. You don't know the gentleman?

A. I don't know the gentleman.

Q. You don't know his name?

A. No, sir.

Q. What was said, who said it, tell us all about the conversation, please.

A. Mr. Falk, when I went in there, asked me if I was afraid of him. I told him no, I wasn't afraid of him.

Q. Did it seem unusual to you that he opened the conversation with that sort of remark?

A. I don't know if it was unusual.

Q. Go ahead. Tell us what happened.

A. He said, "You got my letter. I am glad to hear
2190 that you feel that way after getting my letter."

I said, "I am not scared of you."

He said, "Well, what do you want?" He said, "What do

you fellows want over there?" He said, "Do you want the bargaining agent for the Engineers Union to represent you, or do you want to represent yourselves?"

I told him I thought we could take care of ourselves.

Q. Did you tell him that you had paid the \$2.00?

A. I did not.

Q. He asked you whether you had signed an application?

A. He did not.

Q. Did you tell him whether you had made any move toward joining the Operating Engineers?

A. I did not.

Q. Were you happy about the fact that you did not have to disclose that particular state of facts?

A. I can't say I was happy about it. If he had asked me, I would have answered him.

Q. On March 27th, you attended a little gathering?

A. Yes, sir.

Q. For men working at The Falk Corporation, in conjunction with the International Union of Operating Engineers?

A. Yes, sir.

Q. After that time, you also talked to Phil Santner, and he told you there were fourteen men signed up, didn't he? You will have to talk. You see, these gentlemen cannot take it down if you nod your head, or shake your head. Speak up, please.

A. Yes, sir.

Q. I misspoke when I said Phil Santner. It is Peter Santner, isn't it?

A. I think it is. I couldn't tell you.

Q. Do you recall the last time you talked to Santner concerning these fourteen applications, and getting in the other three men?

A. I think the last time I had a conversation with him was March 27th, at that gathering. I think that is the last time.

Q. Did he tell you on March 27th there were fourteen men signed up?

A. Yes, sir.

Q. He must have talked to you sometime after March 31st, because there were certain signatures on the 31st. Just reflect. Isn't that really true?

A. I don't recall it to my memory.

Q. When did you go to Mr. Falk's office?

A. Wh., I couldn't tell you. It was in April, I think, the first week in April. I couldn't just call it to memory.

Q. Before you were called to Mr. Falk's office, you had not definitely made up your mind that you didn't want
2192 to affiliate with the International Union of Operating Engineers, did you?

A. I had.

Q. Just when did you make up your mind along that line?

A. I couldn't recall that.

Q. You don't know that?

A. No.

Q. Was anything else said by Mr. Falk?

A. No.

Q. Did this other gentleman that worked in the power plant make any statement?

A. I didn't listen to his conversation. I had to go back and get on duty, and I left him to converse with Mr. Falk himself.

Q. Both of you were called into the office at the same time?

A. Yes, sir.

Q. You were spoken to first?

A. Yes, sir.

Q. So that gentleman was spoken to after you left?

A. Yes, sir.

Q. The questions that were directed toward you were not directed towards the other gentleman while you were there?

A. No, sir.

Q. There was not really a discussion. It was a questioning, wasn't it?

2193 A. Just questions.

Q. Did Mr. Falk state that he had had a conference at Mr. Lamfrom's office, at which I was present, and that I had stated to him he was coercing you men, insofar as he was talking to you, and sending this type of notice that he sent, that notice that was handed out in the power plant?

A. I don't think he did.

Q. He didn't mention my name?

Mr. Lamfrom: Do you know this gentleman's name?

Mr. Goldberg: Goldberg.

Q. (By Mr. Goldberg) Did he mention Mr. Goldberg had stated it?

A. No, I don't know that he ever mentioned his name to me.

Q. Did he say that anyone had made that statement at Mr. Lamfrom's office?

A. I believe he said the business agent had been down there, and wanted to have it settled one way or the other.

Q. (By Mr. Lamfrom) Who wanted to have it settled?

A. Mr. Falk.

Q. (By Mr. Goldberg) There was no question in your mind, at the time you talked to Mr. Falk, that it did not please him that the men wanted the International Union of Operating Engineers as their union, was there?

A. No, sir.

2194 Mr. Goldberg: That's all.

Redirect Examination.

Q. (By Mr. Lamfrom) I suppose, as you walked from the power house to Mr. Falk's office, after you were called to the office in April, you were thinking, "Well, pretty soon I will be discharged, and I won't have a job, and I can't get another job." Those were your thoughts, were they?

A. No, I can't say they were.

Q. What were your thoughts as you went over to Mr. Falk's office?

A. I was just wondering what he wanted to talk to me about.

Q. You did not know of any reason why Mr. Falk called you over for the purpose of discharging you?

A. No, sir.

Q. Had it ever been indicated to you that your work was not satisfactory?

A. It had not.

Q. You were just wondering, then, what Mr. Falk wanted to talk to you about?

A. Yes.

Q. Did anything that he said there in any manner indicate to you that if you joined this union, the American Federation Union, that your relations with The Falk Corporation would be interfered with?

A. It did not.

2195 Q. Did you come out of Mr. Falk's office with the impression that you were not going to lose your job?

A. I did.

Q. And why?

A. Why, his conversation throughout, he talked very pleasant to me.

Q. Did you gather from the conversation that Mr. Falk wanted you to refrain from joining any labor organization?

A. No, sir.

Mr. Lamfrom: That's all.

Recross Examination.

Q. (By Mr. Clark) Mr. Sivright, are you familiar with the conditions under which operating engineers who belong to Local 311 work?

A. I don't know that I am.

Q. Do you know of any plants where all of the operating engineers are members of 311?

A. I can't recall it to memory, not any plants in particular.

Q. Was it your idea that this organization that you had an application signed for was to represent just the members at The Falk plant?

A. That was my understanding.

Q. Now, you did not understand, then, that Local 311 had members in other plants?

2196 A. Oh, yes.

Q. You did understand that?

A. Yes.

Q. Did you understand that if you should lose your job for any reason at the Falk plant, and were a member of Local 311, that you could not take a job, although it was offered to you, until all of those members of 311 who had not worked would receive work?

Mr. Goldberg: If the Examiner please, that is not the situation, and I object to the form of the question. It is assuming a fact which is not a fact.

Trial Examiner Batten: Of course, I know of no evidence here which shows that any such condition as that does exist, so I will sustain the objection.

Q. (By Mr. Clark) Did you know that when you signed this application, you agreed not to bring any action against Local 311 in any court of law or equity, no matter what they did?

A. I can't recall it to memory.

Mr. Clark: Do you have that application here?

Mr. Goldberg: Yes, I have the application.

Mr. Clark: Have you any objection to me taking it?

Mr. Goldberg: I think there is a copy in evidence. There is a copy in evidence.

2197 Q. (By Mr. Clark) I call your attention to what has been furnished by Mr. Goldberg, an application for membership in the International Union of Operating Engineers, and particularly to this language:

"And I hereby expressly waive any right to institute proceedings in any court of law or equity against the Union."

Did you know that was in there?

A. I didn't read it.

Q. Did anyone say it was in there?

A. Not to my memory.

Q. Would it have made a difference if they did tell you that no matter what happened, you could not institute proceedings against Local 311?

A. I don't think it would.

Q. Now, Mr. Sivright, you say that at this meeting of March 27th, there were only six men present from your plant?

A. I think it was six, yes, if I recall it to memory.

Q. And you felt, in view of the fact that there were only those few interested in this, that it couldn't amount to much, as far as a bargaining agent was concerned?

A. Yes, sir.

Mr. Clark: That's all.

Q. (By Mr. Goldberg) When did you notify the union that you were not interested in going ahead?

A. I never notified them.

2198 Q. You didn't do it between March 27th and the date Mr. Falk spoke to you?

A. No, sir.

Q. And you haven't done it since?

A. I have not notified them at all.

Mr. Goldberg: That's all.

The Witness: I automatically dropped out of there for non-payment of my initiation fee.

Redirect Examination.

Q. (By Mr. Lamfrom) When you were going from the power plant over to Mr. Falk's office, that day, did it occur to you that Mr. Falk was going to speak to you about a union matter?

A. I can't recall it to memory.

Q. I mean, did you have any idea that that was what he wanted to talk to you?

A. No, I didn't.

Mr. Lamfrom: That's all.

Trial Examiner Batten: That's all.

(Witness excused.)

JOHN YANKOVICH, a witness called for and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Lamfrom) What is your name?

199 A. John Yankovich.

Q. (By Mr. Rissman) How do you spell the last name?

A. Y-a-n-k-o-v-i-c-h.

Mr. Rissman: Thank you!

Q. (By Mr. Lamfrom) How old a man are you?

A. Fifty-two, the 16th of October. I was born in 1885.

Mr. Engelhard: Just a little louder, please. We can't hear you.

The Witness: All right.

Mr. Lamfrom: They all want to hear what you have to say.

Q. (By Mr. Lamfrom) Are you an employee at the power house of The Falk Corporation?

A. Yes, sir.

Q. Are you a licensed engineer?

A. I am a licensed fireman.

Q. Are you a member of a labor organization?

Mr. Goldberg: Off the record.

Trial Examiner Batten: Off the record.

(Discussion outside the record.)

Q. (By Mr. Lamfrom) You are a fireman, you said?

A. Yes.

Q. And I asked you whether you were a member of any labor organization.

A. No, sir.

200 Q. Have you ever been a member of any labor organization?

A. No, sir.

Q. Did you know that the American Federation, Union of Operating Engineer, Local 311, sent a postal card, in April, to a number of men in the power house?

A. Yes, sir.

Q. Did you receive one of the postal cards?

A. Yes, sir.

Q. And the postal card that I show you here in Exhibit

A. Yes, sir.

Q. That is the one you received?

A. Yes, sir.

Q. Did you also receive or have delivered to you from The Falk Corporation a letter, which is like Exhibit No. 18, dated April 16th?

A. Yes, sir, that letter.

Q. And were you called to Mr. Falk's office sometime in April?

A. The first week of April.

Q. Let me ask you this question: In determining whether you should or would be a member of any labor organization, what are the ideas or thoughts that lead you to your conclusion not to be a member of a labor organization?

A. Well, I will tell you right now: A man comes to my house and talks to me, to join a union, and I did join it, 2201 and I pay a dollar down, and then about two days later, I figure it over, and I says, "I pay \$15.00 fee, and \$2.00 a month dues, that is a little bit too much for me." That is what I recall, that is the trouble.

Q. Your trouble is financial trouble, is it?

A. Yes, sir.

Q. That you did not want to pay the union dues?

A. That's all, and fee.

Q. Your relations with The Falk Corporation have been satisfactory to you?

A. All the way through.

Q. Are they now satisfactory to you?

A. Yes.

Q. Do you know of any reason why they will not continue to be satisfactory to you?

A. None at all.

Q. Do you think that not being a member of a labor organization, you can obtain as favorable wages, hours and working conditions from The Falk Corporation as if you were a member of a labor organization?

A. I think I can get pretty near as much as a member of a labor organization.

Q. Was there anything in this letter, Exhibit 18, which influenced you in coming to the conclusion not to be a member of the American Federation of Labor organization?

2202 A. No, sir, no.

Q. Did the fact that this letter contained a statement here, which I am pointing at, "We are not in favor of a union," did that statement influence you at all?

A. No, sir.

Q. In the matter of being a member of the union, or not a member of the union?

A. No, sir.

Q. Were you afraid that if you were a member of the union, you would lose your job at The Falk Corporation?

A. I wasn't afraid, no.

Q. When you talked with Mr. Falk at his office,—you remember the time?

A. Yes, sir.

Q. Just state what he said and what you said, as you remember it, will you please?

A. Yes, sir.

Q. Go ahead.

A. First, when we got the call to go to Mr. Falk's office, it was in my working hours, I just got on the job, I start about 4:00 o'clock. About 4:30, I was in his office, and first he asked me whether I got the letter from him. I said "yes." Then he say, "Did that scare you?" I say, "Not a bit." That's all there was.

2203 After that, we don't talk much, only one thing, I got to go back right on the job again, because there ain't anybody there only myself, and I ain't got no time to talk.

Q. You didn't have much time?

A. I didn't have much time.

Q. Did Mr. Falk know you didn't have much time?

A. He knows that, but he placed chief engineer on my place until I come back.

Q. During the course of the conversation that you had with Mr. Falk, did he ask you whether you were a member of a labor organization?

A. I tell you this way: He just told me this way, that he wants to know if our boys in power house want to join it or not, and he wants to get done with it. He says he was bothered at that time, and he wants to know if we join it or not.

Q. Did he say he didn't want you to join it?

A. No, he didn't say that.

Q. Did he say anything to the effect that you men had your own choice in the matter?

A. That is what he said, organize it or not. He want to know about it, and he is satisfied to sign it. That's all I know.

Mr. Lamfrom: That's all.

Cross-Examination.

Q. (By Mr. Goldberg) Did you ever belong to any
2204 labor union before February 27, 1937?

A. No, sir.

Q. You never made application for membership in any union?

A. No, sir.

Q. Had you ever thought of joining a labor union?

A. No.

Q. In the past?

A. No.

Q. You started to work at The Falk Corporation in 1933, didn't you?

A. Yes. I started first in 1928, then we got laid off for year, then I started to work in power house '33.

Q. Yes.

A. And I started to work by Falk Corporation thirty years ago, 1907.

Q. In 1907, you started at Falk?

A. Yes, sir.

Q. But you were put into the power house in 1933?

A. Yes, the power house I started to work in '33.

Q. And you are one of the youngest men, in point of service or length of service in the power house, aren't you?

A. No, sir. We have two members behind me.

Q. No, only Carl Herzenroeder is behind you, isn't he?

A. No. Art Cotton, he is about two years now.

Q. Oh, yes. He was put in the power house in 1935?

2205 A. Yes.

Q. You think very much of the opinion of Mr. Falk, do you not, Harold Falk?

A. Yes.

Q. Has he ever shown a personal interest in you?

A. No, sir. I don't see Mr. Falk maybe once a year, sometimes.

Q. Since 1907, how many times have you seen him and talked to him?

A. I seen him the first time when he called me in the office.

Q. That is the very first time you talked to him?

A. That is the first time.

Q. They called the chief engineer to take your place, didn't they?

A. They called the chief engineer to take my place until I got down in the office to talk with Mr. Falk.

Q. It seemed to you like a very important proposition, that they had the chief engineer take your place?

A. I was called for it, I was to go to the office, the chief engineer say Mr. Falk want to talk to me in the office, and that he would take my place until I get back.

Q. Did the chief engineer ever take your place before that?

A. No.

Q. That is the first time, in all the time you have 2206 worked there?

A. That's all.

Q. Were you a little afraid of what might happen when you got into Mr. Falk's office?

A. Not a damn bit.

Trial Examiner Batten: Well, if I were as big as you, I don't think I would be, either.

Q. (By Mr. Goldberg) You think you could handle him?

A. Well, I don't know, but I take a chance, anyhow.

Q. Did he ask you whether you had joined the union?

A. Mr. Falk?

Q. Yes.

A. He asked me if I did join it, and I told him I did, and I told him I pay a dollar.

Q. What did he say then?

A. He said, that is up to me.

Q. But what else did he say?

A. Nothing else.

Q. He didn't say another word about it?

A. No, he didn't say nothing to me.

Q. He didn't ask you whether you could use that \$40.00 a year, did he?

A. No.

Q. He didn't ask you whether you could use that \$40.00 a year?

2207 A. No. I didn't say nothing about that.

Q. Or the \$30.00 a year. It is \$30.00 a year.

A. He didn't say nothing about that.

Q. When did you change your mind about the union?

A. That is what I tell you.

Q. (By Trial Examiner Batten) When? A little while ago?

A. I told you I can't afford to pay the fee and the dues, every month \$2.00 dues, and \$15.00 to join, that is too much money for me. That is why I give up.

Q. (By Mr. Goldberg) You are earning about \$155.00 a month, aren't you?

A. Yes, sir.

Q. Did you ever figure it out by the hour?

A. No. We get by month.

Q. How many hours do you put in a week?

A. It all depends. We put six days a week, eight hours a day; and one day off a week.

Q. If the union were able to get you an increase in wages to offset the \$30.00, a year, you have to pay to the union, and still leave some money in your pocket, then you would be satisfied to be a member, wouldn't you?

A. No, I don't pay much attention to any union.

Q. I am just asking you a question, if the union could make some money for you, then you would be satisfied to belong to that union, wouldn't you?

2208 A. Why, we all look for money, sure.

Q. Sure. That is what I am saying. You have nothing against the union, outside of the \$30.00 dues a year, and the \$15.00 initiation fee, is that right?

A. Yes, that's all.

Mr. Goldberg: That's all.

Mr. Rissman: No questions.

Trial Examiner Batten: Mr. Clark?

Mr. Clark: No questions.

Redirect Examination.

Q. (By Mr. Lamfrom) Who were the other positions you worked in in The Falk Corporation besides the power house?

A. In 1928, when I was working for Mr. Falk's plant, I was blacksmith's helper at that time; and in 1931, I got laid off, I was off a year and a half, pretty near two years, then I came back again to Mr. Falk and he told me he is going to give me a chance for two or three days a week, anyhow, to make a living, and I told the boss of the power plant that I got a fireman's license, if there is any chance opened up in the power plant, I would like to get on fireman's job again, and at the same time the chance was open, and he called me in the power house.

Q. Is the job you now have the job that has paid you the most money since you were at The Falk Corporation?

A. How?

2209 Q. Is the job you now have the one that has paid you the most money?

A. Yes, the job now pays most money than any one before.

Mr. Lamfrom: That's all.

Mr. Goldberg: That's all.

(Witness excused.)

Trial Examiner Batten: I think Mr. Lamfrom or Mr. Rissman will call you if they think it is necessary for you to return.

Mr. Goldberg: They did that yesterday, thank you.

Mr. Lamfrom: Mr. Falk, will you return to the stand?

Trial Examiner Batten: I think we will recess before resuming with Mr. Falk.

(A short recess was thereupon taken.)

HAROLD S. FALK, a witness called by and on behalf of the Respondent, having been previously duly sworn, resumed the stand and testified further as follows:

Direct Examination (Continued).

Q. (By Mr. Lamfrom) Some reference was made, Mr. Falk, in your examination by Brother Rissman of a speech that you made to the Junior Association of Commerce, which speech was broadcast over the radio. Do you remember that?

A. Yes, I do.

Q. Do you remember about the time that that speech was made?

2210 A. No, I do not. It seems to me about a year ago.

Q. I am handing you now a typewritten copy of what purports to be that speech, and ask you whether you have heretofore looked over this, and whether or not that is the speech, or a written copy of the speech that you made at that time?

A. Yes, it is.

Q. Did you deliver that speech from a written document at the time?

A. I did.

Mr. Lamfrom: I ask to have this marked Respondent's Exhibit No. 11.

Mr. Rissman: You can offer it.

Mr. Lamfrom: I offer it in evidence.

Mr. Rissman: I think the Examiner asked that this be produced, so I do not object to its introduction.

Trial Examiner Batten: Yes, I think I stated at the time.

Mr. Rissman: You asked if it was available.

Mr. Lamfrom: It is natural that I offer it in evidence. You have no objection?

Mr. Rissman: No.

Trial Examiner Batten: There being no objection, it will be received.

(Thereupon, the document above referred to, marked RESPONDENT'S EXHIBIT NO. 11, was received in evidence.)

2211 Mr. Lamfrom: Mr. Engelhard will now examine Mr. Falk, Mr. Batten, on matters concerning which other witnesses have testified about. He has been over the transcript and I haven't, and it is a matter of convenience, that's all.

Q. (By Mr. Engelhard) Were you in the courtroom at the time when William Neal was on the stand to testify?

A. I was, part of the time.

Q. That was last Thursday night, as you recall?

A. Then I was here all of the time, if that was all his testimony.

Trial Examiner Batten: I think his testimony ran more than just the evening, didn't it, Mr. Engelhard?

Mr. Engelhard: I think he started in the afternoon, and he came back and finished in the evening.

The Witness: I heard what was finished in the evening. I was not there during the day, I don't think.

Q. (By Mr. Engelhard) In connection with the meeting of April 8th, which was the last Works Council meeting, Mr. Neal testified, in answer to the question,

"Will you tell us what Mr. Falk said at that meeting?", and he said:

"Well, we had asked for a vacation with pay and a bonus at our former meeting."

Stopping there, now. Do you recall whether or not a wage increase and a bonus were discussed at the March meeting of the Works Council?

2212 A. No, I do not.

Q. Do you know whether the Works Council had requested a raise in pay at the March meeting?

A. No, I do not.

Q. (Reading):

"Mr. Falk came in and offered us a raise in wages to take the place of vacation with pay, and also stated he would consider the bonus later."

Is that correct?

A. I said that.

Q. (Reading):

"That is, he would give us the raise and a vacation with pay, providing there was no third party intervening."

A. I don't think I said "third party intervening". What I had in mind was that the arrangement that I was now making with the Council, as I said, was to stand as long as the Council stood, and that if the Council went out of existence for any reason, and some other organization came in, that the negotiations being made and having been made with the Council would not stand, that new negotiations would have to be opened up.

Mr. Rissman: I move that be stricken as not the conversation. Mr. Falk prefaced his remark by saying "I 2213 had in mind."

Trial Examiner Batten: Read the question, please. (Question read by the reporter.)

Trial Examiner Batten: The question, as I understand it, is whether there was any such conversation. Is that right, Mr. Engelhard?

Q. (By Mr. Engelhard) Whether or not you made such a statement, and nothing further.

A. I made such a statement, yes.

Q. Is that all you said, "... providing there was no third party intervening?"

A. I don't believe it was all I said, no. I might have said a little more, but I don't remember now what it was.

Q. Did anybody ask you at that meeting who you meant by "a third party"?

A. No.

Mr. Rissman: If the Examiner please, has the previous answer been stricken?

Trial Examiner Batten: Was there any request that it be stricken?

Mr. Rissman: Yes. I moved it be stricken, at that time, because it was not responsive, and did not relate conversation.

Trial Examiner Batten: It may be stricken.

Q. (By Mr. Engelhard) Mr. Neal said that you said that you would give a raise and a vacation with pay, providing there was no other party intervening:

2214 A. No, I didn't say that.

Q. What did you say?

A. I said substantially that the raise that we had dis-

cussed and had agreed upon would stand with this group; that if another group came into being, that this arrangement would be off, and new negotiations would have to be had. That was the substance of the discussion?

Q. When did you say that?

A. As I remember that, it happened at what has been referred to here as the last meeting of the Works Council.

Q. That was April 8th. Why did you make that statement?

A. Why did I make it?

Q. Yes, why did you make that statement?

A. Because I didn't see any reason why I should make a blanket arrangement, and then have it stand, no matter what happened afterwards.

Q. Did you have in mind at that time the thought that you might be called upon to bargain with some other group later on?

A. Yes, I think I did.

Q. You knew that the Works Council would have to quit?

A. Yes.

Q. Mr. Neal testified that at that meeting, you talked about the Cutler-Hammer Company, that you said, in answer to a question,—Mr. Neal said:

2215 "He talked to the officials down there, and they had the C. I. O. and the American Federation of Labor both in there, and it seems they were having trouble, and that he named a certain amount, I don't remember just what it was, that belonged to each one, he said they were having trouble and that Cutler-Hammer was going to let it run along the way it was as long as they could; he said if they couldn't do anything about it, they were going to dump it over into the government's lap."

Did you say anything like that at that meeting on the 8th?

A. Perhaps I did mention the Cutler-Hammer situation. I don't recall it very distinctly; but I may have, because I knew about the Cutler-Hammer situation; I talked to Mr. Voght a number of times about it.

Q. What did you say about the Cutler-Hammer situation?

A. If I said anything, I recited the situation as I knew it, and that simply was this: That Mr. Voght had told me on several occasions that they had both organizations—or they had the A. F. of L. in their plant, that the toolmakers had told them they didn't desire to belong to the A. F. of L., and that, if they were forced to join a union, they would prefer

the C. I. O., and, in my conversation with Mr. Voght, 2216 I said, "What are you going to do if you get that kind of organization in your plant?" He said, "Well, we will have to let the Labor Board decide it," or something to that effect.

Q. Who is Mr. Voght?

A. Mr. Voght, I think, is the vice-president.

Q. Of Cutler-Hammer?

A. Of Cutler-Hammer.

Q. Would you say that is what you said; in substance, to the question?

A. If I said anything at that meeting, undoubtedly that is what I said.

Q. Mr. Neal testified that at the meeting on the 8th, that Mr. Adamski asked you what you aimed for the boys to do, the record says:

"Adamski asked him what he aimed for us to do."

"Q. What did Mr. Falk say?" Answer: "Mr. Falk said he didn't believe he had anything to say about that, but he would answer the question if, that is what he figured on doing."

Did you, at that meeting on the 8th, indicate to the men that you aimed for them to start an independent union?

A. No.

Q. Did you talk about an Independent union at that meeting at all?

2217 A. No.

Q. Mr. Neal also testified,

"Mr. Falk said that he would get the information for us, how to start this independent union, and would let us know later about it."

Mr. Rissman: If the Examiner please, I object to the form of the questioning. We will be here for six months. Mr. Engelhard is not cross-examining Mr. Neal now. He may examine Mr. Falk as to anything and everything he said at all of these meetings, but the method he pursues, reading the testimony that is already in the record, can serve no purpose, but merely prolong the proceedings and clutter up the proceedings.

Trial Examiner Batten: I think you are mistaken when you say he is reading the testimony, because he is not, there has been no transcript made of the proceedings here, so I assume the questions are not read from the transcript.

As I understand it, they are read from an unofficial tran-

script which the Respondent's own reporters have made. However, I see no objection to him proceeding. As a matter of fact, it may be shorter to do it this way than to go through extensive cross-examination, Mr. Rissman, so, for that reason, I would overrule the objection, because I think, as a matter of saving time, the way in which Mr. Engelhard is proceeding probably is the most satisfactory way.

Mr. Rissman: When I said "transcript", I meant a typewritten record of his, unofficial, which purports to be a record of what has occurred here.

Trial Examiner Batten: I will overrule your objection. You may proceed, Mr. Engelhard.

Mr. Engelhard: May I have the last question?

(Last question read by the reporter.)

Q. (By Mr. Engelhard) (Continuing). Did you, at that meeting of the 8th, make any such statement, that you would get information for the men to start an independent union?

A. No.

Q. Did any of the men request any information at the meeting of the 8th from you about an independent union?

A. Not that I remember anything about.

Q. Mr. Neal also testified that at the meeting of the 8th, you said that they could meet, "That the Works Council and former Works Council men could meet to make arrangements for organizing an independent union on company property, but after it was organized, we would have to meet off of the property."

A. No.

Q. Did you make any such statement?

A. I did not make such a statement.

Q. Was there any discussion of meeting on company property at that meeting?

A. I don't remember any.

Q. For the purpose of organizing an independent union?

A. I don't remember any.

Q. Do you recall, Mr. Falk, whether anybody asked you for permission to meet in the basement of the hospital?

A. No, I don't.

Q. At that meeting?

A. No.

Q. Were you present at any other meeting when the men met in the basement of the hospital, other than on the 12th of April?

A. No.

Q. Mr. Neal testified that you were there on the 13th.

A. No.

Trial Examiner Batten: Will you read his testimony? Do you have his testimony there?

Mr. Engelhard: Yes.

Trial Examiner Batten: Will you read the questions and answers, please?

Mr. Engelhard: (Reading):

Question: "What occurred at that meeting of April 13th?"

Answer: "Well, the meeting was adjourned, and some of the men—some of the night men went home. I went out in the foundry and talked to Stanley Adamski."

2220 Then he refers to a meeting at the plant, when Mr. Falk was met, in the hallway.

Trial Examiner Batten: The reason I asked that, Mr. Engelhard, my recollection is that he did not testify positively. I think he said it was his recollection that he was there. Is that what the record shows?

Mr. Engelhard: He says here: (Reading):

"Was another meeting called?"

"Yes."

"When?"

"That same afternoon."

"Who was present at this meeting?"

Answer: Practically all the fellows that had been present at the first meeting, and one or two of the night men."

"Was that held underneath the hospital?"

"Yes."

"What took place at that meeting?"

Answer: "Well, Mr. Falk explained what he had found out."

Question: "Mr. Harold Falk?"

Answer: "Mr. Harold Falk."

Question: "Just tell us what he said, if you can."

Answer: "Well, he said we would have to incorporate, and that we would have to do it as quick as possible because
2221 the C. I. O. were working in the plant."

Q. (By Mr. Engelhard). I ask you, first, whether or not you attended a meeting below the hospital on the 13th?

A. No, I only attended one meeting, that was the first one.

Q. I will ask you whether, at any meeting, you made the remark that the men would have to incorporate, and that they would have to do it as quick as possible, because the C. I. O. was working in the plant?

A. No.

Mr. Rissman: I may point out, if the Examiner please,

that Mr. Neal in his testimony was indicating that Mr. Falk had said to the men—Mr. Neal did not testify that Mr. Falk made that statement at the meeting. As I remember his testimony, he said Mr. Falk told the men at a meeting of the Engineering Department.

• Trial Examiner Batten: I think, Mr. Rissman, when the Examiner gets the official transcript of the record, by reading the entire testimony I can tell.

I simply made the remark that I wanted Mr. Engelhard to read it.

Mr. Engelhard: I can clear that up, because I have all this marked with red, in order to get the chronological development, and I now turn to the cross-examination I gave Mr.

Neal about this meeting of the 13th.

2222 Trial Examiner Batten: Well, I don't know as it is necessary. As I say, I will read the entire transcript.

Q. (By Mr. Engelhard): With reference to the remark, or to the matter that I read to you, that you said at that meeting of the 13th, "Well, he said we would have to incorporate, and that we would have to do it as quick as possible, because the C. I. O. were working in the plant," I ask you whether or not you made that remark at any time at any meeting, or anywhere else?

A. No, I did not.

Q. To the men?

A. No, I did not.

Q. Mr. Neal testified that between the first meeting on the 13th, and the second meeting on the 13th, that you and a number of other men, including Mr. Neal, had a short conversation in the hallway—I think he said the Electrical Department.

Trial Examiner Batten: By the Electrical Department?

Mr. Engelhard: Yes, near the Electrical Department.

Q. (By Mr. Engelhard): Do you remember, Mr. Falk, of meeting some of the men on Tuesday afternoon of the 13th?

A. I wouldn't deny that I did, but I haven't got a flicker of recollection on it, at all.

Q. He claimed that at that meeting you told that you had found out how to incorporate?

2223 A. I am sure I didn't make that statement.

Q. Did you make any such statement at that time?

A. I am sure I did not.

Q. Or at any other time?

A. No, sir.

Q. And that another meeting should be called, and that to get this thing going as quick as he could?

A. No, sir.

Q. Did you make any such statement at that time, or at any other time?

A. No.

Q. To any of the men?

A. No.

Q. What is your answer?

A. No.

Q. Mr. Neal testified at the meeting of the 12th you came in towards the end of the meeting, or rather, you came in after the meeting had been going on for some time, and that you said that you did not have any information and could not get the information as regards the forming of this organization. Did you make any such statement at the meeting on the 12th?

A. No.

Q. What questions did the men ask you about—I mean, about what subject did the men ask you questions at the 2224 meeting of the 12th?

A. The only thing I can recall is the discussion that we had about the Wagner Act, or it probably included the other one, too, but that is the only thing I have any memory on. I simply tried to tell them what their rights were under the Act. That is all I could do. There was that other request for moving wages up, as I remember it, too.

Q. I mean with regard to the Independent Union?

A. No.

Q. Mr. Engelhard: What discussion there was. I might say I have only got one more item.

Trial Examiner Batten: Go ahead, Mr. Engelhard. We still have forty minutes before lunch time.

Q. (By Mr. Engelhard) Mr. Landry testified that John Wilfer asked you a question regarding the manner of raising wages, and asked you, if you pushed the raise up a month, from June 1st until May 1st, wouldn't it keep a lot of men from joining the C. I. O. I will ask you whether or not Mr. Wilfer's question included any such statement?

A. No.

Mr. Engelhard: That's all.

Recross-Examination.

Q. (By Mr. Rissman) Mr. Falk, these various meetings that you attended in April, you are unable to recall many of the things that were said and done, as you have testified 2225 here, is that so?

A. Yes, in detail.

Q. Yes. Some of these items that Mr. Engelhard has read to you, you can't recall whether they were or were not said just in that way?

A. I am pretty definite on the fact that this constant reference to C. I. O. and incorporation of the Independent Union was not brought up.

Q. On this last question, with reference to the moving of the raise from June 1st to May 1st, and keeping the men out of the C. I. O., if that were done, Mr. John Mitchka also testified, and so did several other witnesses in addition to Mr. Landry.

Is it still your testimony that you didn't hear it, or is it possible that you did hear it, but do not recall it at this time?

A. I certainly have no recollection of any reference to the organization in connection with that question.

Q. Yesterday afternoon, you testified in response to a question put to you by Mr. Lamfrom that you were disappointed to see your men going into the C. I. O., or disappointed at the C. I. O. activities. Do you recall that testimony?

A. I do, yes.

Q. Did you ever express that disappointment to any of the employees?

2226 A. I may have.

Q. Mr. Lamfrom has asked you a number of questions with reference to the effect that the two labor organizations had upon the production and shipping of finished products and receipt of raw materials by the company. Do you recall that?

A. Yes, sir.

Q. And I believe you testified that for about a period of two weeks, there was an interruption in the affairs of the company?

A. That's right.

Q. Can you tell us if you know, Mr. Falk, what effect a strike or lockout at your plant would have upon the shipment of finished products and the receipt of raw materials?

A. It would completely stop.

Q. How did you know, Mr. Falk, that the meeting of April 8th was the last meeting of the Works Council, or was it the last meeting?

A. I don't know that I did know that.

Q. I believe you testified, in response to a question by Mr. Engelhard a little while ago, that at the time you spoke to the men about the Cutler-Hammer situation, you had in mind the fact that the Works Council would be affected by legislation, and would no longer continue?

A. I had it in mind, yes, but I hadn't given it very much thought as to whether that was going to be the last one or not.

Mr. Lamfrom: I believe the record shows, Mr. Rissman, it was on that very day, April 8th, that the assembly passed the Severson Act.

Q. (By Mr. Rissman) Do you recall whether you knew that fact at the time of this meeting?

A. No, I don't.

Q. In this speech that has been marked and introduced here as Respondent's Exhibit 11, there is quite a bit of matter there with reference to foremen training and labor policies of an employer, and things of that sort. Can you tell us, Mr. Falk, if the foremen and supervisory officials of your company are trained in any way so that they may extend to the employees they come into contact with the labor policies of the company?

A. Mr. Rissman, before the depression, we were in the habit of having monthly meetings with the foremen, at which we discussed quite freely the problems of the plant, and also our cost sheets. When the depression came along, we had to give it up, and we haven't since resumed, although I am hoping to do it.

Q. Do the foremen at your plant have any way of knowing what the labor policies of the company are?

A. Yes, I should say so, by constant contact with us, and discussions that we have. We have no printed forms, or instructions, or anything to that effect, if that is what you have in mind.

Q. No. I mean through their contacts with you.

A. That is really the only way.

Q. And perhaps discussions. Were you present, Mr. Falk, at the meeting with the representatives of the Independent Union when they asked to be recognized for the purposes of collective bargaining?

A. No, I was not.

Q. What was your first contact with representatives of that union? Let me refresh your memory. I believe you testified that there was a meeting on April 26th, when representatives of the Independent Union came in to see you about some other matters.

A. The date I don't know, but I did have a meeting with them sometime subsequent to that.

Q. Yes. Did you know at the time you met with them how many employees they represented?

A. Yes, I think I did. I think they had supplied us with an affidavit, although I don't recall the date of it, I am not certain about that, whether I knew at that time from that affidavit, or before.

Q. Well, this affidavit indicated what?

A. I don't remember the number on it now.

2229 Q. I don't mean the number. Did it indicate the number of employees?

A. I think it did.

Q. Was that number, as you recollect it now, more than a majority of the employees?

A. As I recollect it, it was.

Q. Did you take any other steps to determine whether or not the information in the affidavit was accurate?

A. No, I did not.

Mr. Rissman: That's all.

Redirect Examination.

Q. (By Mr. Engelhard) Mr. Falk, how did it happen that the men were paid for the time spent in attending the meetings on the 12th, 13th and 14th?

A. How did it happen that they were paid?

Q. Yes, how did it happen that they were paid?

A. I don't know.

Q. Did you instruct anyone to pay the men for attending those meetings?

A. No.

Mr. Rissman: I believe on direct examination originally, when he first testified, he said he didn't know the men had been paid, and he didn't know anything about the payment.

Q. (By Mr. Engelhard) When did you discover that the men had been paid? Now, I mean you personally.

2230 A. I don't know whether I discovered it. I know I heard it discussed around the office there, but I didn't pay very much attention to it.

Q. Do you know on whose authority these men were paid?

A. No, I do not.

Q. Or whether or not anybody authorized payment?

A. No, I do not.

Q. From the system that you have in your plant, if men punched their cards, and it went into the Accounting Department, the Accounting Department pays out whatever is shown on the cards?

A. Unless somebody in that department had some reason to object to it for some reason or other.

Q. There are errors made occasionally?

A. Oh, yes.

Q. Or is that quite frequent, that there are errors made?

A. I imagine there are probably—in a large payroll like that, there are probably a number of errors each payday.

Q. So that some men are overpaid, and some men underpaid, is that right?

A. That's right.

Q. And later on, when that is discovered, an adjustment is made?

A. That's right.

2231 Q. Either up or down?

A. That's right.

Q. When you were informed that these men had been paid for the time that they were in attendance at these meetings, what action did you order?

A. I didn't order any.

Q. Who deducted their pay?

A. I think the Payroll Department.

Q. On whose authority?

A. Very probably Mr. Connell's.

Q. You gave no order—

A. No.

Q. (Continuing)—that the amount be deducted?

A. I did not, no, sir.

Q. So far as you know, Mr. Falk, Mr. Connell sought the advice of Mr. Lamfrom when he discovered these men had been paid, as to whether or not that could stand?

A. Maybe he did. I don't know about it. He may have.

Q. Mr. Lamfrom stated for the record the other day that he advised your corporation to deduct that, after it was discovered that they had been paid. That is your understanding of it, is it?

Mr. Rissman: Mr. Lamfrom has stated that. We do not question it at all.

Trial Examiner Batten: I don't think there is any 2232 dispute, Mr. Engelhard, as to that.

Mr. Engelhard: I wanted to know what Mr. Falk personally had to do with it.

Trial Examiner Batten: He said he didn't.

The Witness: I didn't know until he told me just now you had talked with him, I didn't know you had talked to him.

Mr. Rissman: Off the record, we do not question that at all. We may question the soundness, but not the fact he advised him.

Mr. Lamfrom: You mean to say your opinion varies in any respect with that?

Trial Examiner Batten: This is not on the record.

(Discussion outside the record.)

Mr. Lamfrom: Mr. Falk, I just want to ask you one more question:

Q. (By Mr. Lamfrom) I am handing you here a typewritten document, dated June 24, 1937, and ask you what that is.

A. It is a statement that I wrote and put up on the bulletin board, apparently on the 24th of June.

Mr. Lamfrom: I ask to have it marked Respondent's Exhibit 12.

Mr. Rissman: May I see it?

Mr. Lamfrom: Sure.

Mr. Rissman: I have no objection.

2233 Mr. Lamfrom: This, Mr. Examiner, is a statement by

The Falk Corporation to the effect that neither under the National law or the Wisconsin law is it required that the employer permit the collection of dues for any union on company premises, and that The Falk Company announces they are not agreeable to the collection of any such dues for any organization on Company premises.

I offer that in evidence.

Trial Examiner Batten: It may be received.

(Thereupon, the document above referred to, marked RESPONDENT'S EXHIBIT NO. 12, was received in evidence.)

Mr. Lamfrom: Respondent rests.

Recross Examination

Q. (By Mr. Rissman) Prior to the posting of this notice, had there ever been any announcement of any rule regarding the matters stated in that notice?

A. Not printed, no.

Mr. Rissman: That's all.

Trial Examiner Batten: I presume, in order to clear up the situation that came up a moment ago, I think the Examiner at this time will request the reporter to put this statement in:

That all references which have been made to testimony and statements by witnesses in this proceeding have been 2234 read, not from the official transcript.

Mr. Lamfrom: That is, when they have been read.

Trial Examiner Batten: Yes.

Mr. Lamfrom: Yes.

Trial Examiner Batten: Whenever they have been read, they have merely been read from an unofficial transcript, and therefore cannot be considered official.

Where there is any variance between the statements as contained in this unofficial record and the official record, of course the official record will have to be controlling.

Mr. Lamfrom: Unless, for some other purpose, at a later time, it would be necessary to have issued out of a court a writ of coram nobis.

Trial Examiner Batten: Unless, of course, counsel appears before the proper authorities, and makes the proper motions.

Mr. Lamfrom: You understand what I mean?

Trial Examiner Batten: Yes, I understand. The proper motions to revise, correct, add to, and change the official transcript.

Mr. Lamfrom: All interlineations, alterations and changes made before signature.

Trial Examiner Batten: Mr. Clark, do you want to start now?

You are excused, Mr. Falk.

(Witness excused.)

2235 Trial Examiner Batten: Or would you rather start after adjournment?

Mr. Clark: I think we can expedite matters if we wait until after adjournment.

Trial Examiner Batten: We will reconvene at 1:30.

Let me ask this: This does not need to be in the record.

(Discussion outside the record.)

Trial Examiner Batten: Then we will reconvene at 2:00 o'clock, gentlemen.

(Whereupon, at 12:10 o'clock p. m., a recess was taken until 2:00 o'clock p. m. of the same day, Wednesday, August 25th, 1937.)

2236 After recess.

(Whereupon, the hearing was resumed, pursuant to recess, at 2:00 o'clock p. m.)

Trial Examiner Batten: We are ready to proceed.

Mr. Clark: I will call Mr. Prodoehl.

ALBERT PRODOEHL, a witness called for and on behalf of the Independent Union of Falk Employees, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Clark) What is your full name?

A. Albert Prodoehl.

Q. How old a man are you?

A. Thirty-one.

Q. Are you married?

A. Yes, sir.

Q. Do you have a family?

A. Yes, sir.

Q. Where do you live?

A. Sir?

Q. Where do you live?

A. On the South Side.

Q. What is your address?

A. 1811 South Fourth.

Q. Mr. Prodoehl, you are employed at The Falk 2237 Company, are you?

A. Yes, sir.

Q. How long have you been employed there?

A. Approximately fourteen years.

Q. What education have you had?

A. Eighth grade, in grade school, night school at Tech, and an I. C. S. course in mechanical engineering, at night work at Wisconsin Extension.

Q. What was the nature of the work you took at the Wisconsin Extension?

A. Just specializing in mechanical engineering.

Q. What is the fact as to whether you were employed prior to the time you went to the Falk Company?

A. At the Daly Manufacturing.

Q. What were you doing there?

A. Oh, I was just working in the tool room, handing out tools.

Q. What department of The Falk Company did you go into when you started?

A. I started upstairs in the Tracing Department, and

went down in the large core room, and from there I went to the big floor in the foundry for nine months, and from there I went into the Machine Shop.

Q. How long were you in the Machine Shop?

A. About two years.

2238 Q. And from the Machine Shop, where did you go?

A. Then they called me back up in the Engineering Department.

Q. Have you been there since?

A. Yes, sir.

Q. What is the nature of your work now?

A. Checking and designing.

Q. And you are generally known as a draftsman, are you?

A. Yes, sir.

Q. Do you have occasion in your work to visit the foundry and machine shop at the Falk plant?

A. Yes, sir.

Q. You are familiar with the layout of that plant?

A. Yes, sir.

Q. You are familiar with the work done in it?

A. Yes, sir.

Q. Do you know a lot of the men who work in the foundry?

A. Yes, sir.

Q. Are some of the men who work in the foundry those who worked when you were there?

A. Some of the men are still there.

Q. And how about the machine shop?

A. There are quite a few of them.

Q. Now, what is your relation with these men who work in the foundry and the machine shop, as well as you
2239 can tell us?

A. Well, there are a few of them I know outside of work, and I still go to see them, go out with them.

Q. With regard to those that you do not see outside of work, do you feel above and superior to them?

A. What do you mean? In what respect?

Q. In any way.

A. Why, why should I?

Q. I am just asking you the question.

Trial Examiner Batten: He is asking you.

The Witness: A. No, I do not.

Q. (By Mr. Clark) The fact that they work in dirty clothes, does that make any difference to you?

A. Not at all. I once did.

Q. Now, Mr. Prodoehl, you were never a member of the Works Council, were you?

A. No, sir.

Q. What is the fact as to whether your department was eligible for membership in the Works Council? Did you have any representative in the Works Council?

A. Not at all.

Q. Directing your attention, Mr. Prodoehl, to the week prior to April 18th, do you have that time in mind?

A. Yes.

Q. With relation to meetings, will you tell us what 2240 you know about any meetings that were had that week?

A. The first that I heard of it was when I was informed to come downstairs below the hospital, that was a Thursday, that was the 15th. I don't even know who called me down.

When I got down there, they said they would like to have the Engineering Department represented, and I didn't know what it was all about, I didn't say anything, I just sat and listened, because I gathered at the time that these meetings were going on for some time, and I didn't open my mouth. I just sat and listened.

Q. After that week, the week commencing with April 19th, do you know of any meeting that was had then?

A. When this started, I attended this open-air session at the North Avenue Auditorium.

Q. You refer to the meeting of the 18th?

A. Yes.

Q. You were at that meeting?

A. Yes.

Q. Tell us as best you can what you recollect happened at that meeting?

A. Nothing very much happened. I didn't know what we were supposed to do at that meeting. I happened to be up on the stage, and they asked me what it was all about, and I told them I didn't know, that the rest of the men formed this, 2241 called this meeting, and as far as I remember, why nothing came of it.

Q. You call it an open-air meeting. Why do you describe it that way?

A. There was no order, everybody was opening their mouth; we did nothing.

Q. (By Trial Examiner Batten) You mean "hot air"?

A. Hot air? Well, a lot of windows were open, and there was no order, one man over there, this one, and that one, they would all get up and talk at the same time.

Q. (By Mr. Clark) Do you remember whether Mr. Burke appeared at that meeting?

A. Yes, he did.

Q. Do you know, with relation to the meeting, how long after it started he came?

A. I think they requested to have some legal advice up there, and somebody said, "It is all taken care of. If we want it, I will call up an attorney."

Q. Do you remember Mr. Burke being there?

A. Yes, I do.

Q. Tell us, as well as you can, what Mr. Burke said.

A. Well, he was up there just for answering and giving advice on the law that was just passed.

Q. Did he say that?

A. He didn't say that, but that is what I am telling you.

Q. I am asking you, what did he say, Mr. Prodoehl, 2242 as well as you can remember?

A. Well, I remember one thing. I don't know if he started out with it, or if it was after he was through that he said, "As far as I am concerned, you can join any organization, any union."

Q. Did he name them?

A. He did.

Q. What did he name?

A. The A. F. of L., the C. I. O., or any association. Yes, he said, "Or any association."

Q. Do you remember questions being asked of Mr. Burke at that time?

A. I do.

Q. And he answered them, did he?

A. He did.

Q. Was any action taken by way of a motion or a resolution at that time, that you remember?

A. Not at all.

Q. And what is the fact as to whether there was considerable confusion around there?

A. Well, nobody seemed to run the meeting to start off with, and during the time that the meeting was to be called to order, one of the ones that started the meeting, or Greget, he wasn't there, so I thought well, he was supposed to run it,

so I got on the 'phone to find out if he was coming, and
2243 I called him up, and his wife said he left about an hour
and a half.

Q. Now, Mr. Prodoehl, without going into that detail, that
meeting adjourned without anything being done, as far as
you know?

A. Yes, sir.

Q. Now, when did you attend the next meeting of any
kind with regard to organization?

A. The men up in the Engineering Department—

Q. No. When was it?

A. The 21st.

Q. To refresh your recollection, Mr. Prodoehl, you refer
to the Monday after the meeting on Sunday?

A. Well, then we had a meeting, the fellows upstairs
wanted to find out—or, some of the men from upstairs were
at this meeting.

Q. Yes.

A. Then they thought it would be best to find out for
themselves what they could do, so we, some of the men up-
stairs, got in touch with Mr. Dunne, I think he is a judge
here in Whitefish Bay.

Q. A lawyer?

A. Yes. And we had him over at the Republican Hotel.

Q. When was it?

A. That was on a Monday.

2244 Q. And, having in mind the fact that the Sunday
meeting was the 18th, that would be the 19th of April?

A. Yes.

Q. What happened at that meeting?

A. Then most of the—I would say most of them, very
few did not attend from the Engineering Department and
the office, we had that meeting, that was just for the purpose
of him explaining.

Q. By "him," you mean Mr. Dunne?

A. Mr. Dunne, explaining the Wisconsin law on the labor
question, what we could do. They just wanted to know for
themselves, have a quiet meeting. That is what it was.

Q. Was any action taken at that time?

A. Not at all, it was just for information.

Q. How was the hall paid for, if you know?

A. By collection. Mr. Dunne was reimbursed, I believe.
also.

Q. When was the next meeting that you attended?

A. The next one was held a couple of days later, I believe it was on a Wednesday.

Q. And where was it held?

A. At Republican House.

Q. And who was in attendance generally?

A. That was just the same people that was at the other meeting, but this was called for the purpose of organizing, just the Engineering Department and office.

2245 Q. What action, if any, was taken at that time?

A. We called that meeting to get an opinion of what the rest of the people wanted to do, whether we should—we knew that Monday night we could form a union or an association or a club, just as office workers and draftsmen and clerks, to represent ourselves, and that is why this little meeting was called, to get an opinion of all the people, to have a vote.

Q. You mean you knew that from the advice given you by Mr. Dunne?

A. Correct.

Q. Was a vote taken on Wednesday?

A. There was.

Q. And what was the nature of the action?

A. On that particular vote, the question was whether we should form our own association, club or union to represent the office workers, or if we should join with the union being organized in the shop, which we knew of at that time.

Q. Was the question of joining the C. I. O. mentioned at this time?

A. I believe all of them were mentioned.

Q. So the question was, what should your group do with relation to the organization?

A. Yes.

2246 Q. What was the outcome of that, do you know?

A. Well, it was decided on that if we had representation in the union in the shop, we would go in with them, rather than have more than one organization representing us.

Q. By "the union in the shop," do you have reference to the Independent Union?

A. Yes, sir.

Q. What is the fact as to whether you attended the meeting at the North Side Auditorium on the 24th of April?

A. I was temporary chairman at that meeting.

Q. Do you know by whom that meeting was called?

A. By the incorporators.

Q. Who were they?

A. Mr. Wilson, Mr. Trost and Mr. Menz.

Q. What is the fact as to whether notice was sent out with reference to that meeting?

A. Yes, there was.

Q. Do you know who ordered the notices?

A. No, I do not.

Q. Now, at this meeting of the 24th, what is the fact as to whether articles of incorporation were read? Do you remember that?

A. I don't remember that, but I know that I read the by-laws, because there was a discussion as to the changing of those.

2247 Q. And were some suggestions made as to the change in the by-laws?

A. Yes.

Q. Do you remember any of those changes?

A. I don't know just exactly what changes were made.

Q. What is the fact as to whether an election was conducted at that meeting of the 24th?

A. There was an election.

Q. There was an election?

A. Yes.

Q. Who were elected?

A. They elected the directors.

Q. And how many directors were elected?

A. Thirteen.

Q. And how were they selected, if you know?

A. They were selected from each department in the plant. We tried to select a certain number from departments that had more men than other departments, so they were well represented.

Q. Do you remember the apportionment of those directors?

A. What was that?

(Question read by the reporter.)

Mr. Clark: Strike that question, please.

Q. (By Mr. Clark) How many directors from the various departments, do you know that?

2248 A. Some, not all.

Q. You were elected a director at that time, were you?

A. Yes, sir.

Q. From what department?

A. From the Engineering and Drafting.

Q. With reference to the directors, when did they first meet?

A. Right after the regular meeting, that was held that afternoon.

Q. And what did they proceed to do?

A. Well, the directors at that meeting got their instructions from the men at the regular meeting. We only act on what the members recommend.

Q. They elected officers, didn't they?

A. Yes.

Q. Who were elected to those offices?

A. Mr. Wilson was president; Mr. Adamski as treasurer; and Mr. Moebus as secretary; and myself as vice-president.

Q. There is some testimony here, Mr. Prodoehl, concerning the election of a man named Dearth. Do you recollect that?

A. Yes.

Q. What, if anything, was done about that?

A. After he was elected a director—this was before the directors had their meeting out in the hall, their regular meeting, some of the men said that he was supervisor 2249 or a foreman, and at the time of the election they didn't say anything; so in the directors' meeting, the president, he vacated his chair, and I was acting chairman, and made an objection to him being a member of the Independent Union, not only as a director.

Q. What, if anything, was done concerning the filling of that vacancy at that time?

A. We were to find out definitely if he was foreman, and if he was, he would be out, and at the next meeting we would elect another director from that department.

Q. What is the fact, if you know, as to whether another director was elected to take his place?

A. Yes, he was.

Q. Now, Mr. Prodoehl, do you feel that this organization, constituted as it is, is a capable representative of all of its members for the purpose of collective bargaining?

A. Yes, I do.

Q. Why do you say so?

A. First of all, we are one of the members working in the plant, and we know the conditions, and they can take it up with the directors individually, and we can look into it before we bring it at a Board meeting, or at a regular open meeting.

By "open meeting", I mean a regular monthly meeting.

2250 Q. Do you feel that the directors, selected as they are, are in a position to know of the various problems in The Falk plant?

A. Yes.

Q. What is the fact as to whether your Board of Directors have had regular meetings since April?

A. We have a meeting of the Board of Directors after every monthly meeting, and if necessary, we call a special meeting.

Q. Have you had any of those special meetings?

A. Yes, sir.

Q. How many?

A. On an average of about once a month.

Q. What is the fact as to whether grievances have been presented by members to the Board of Directors?

A. Yes, there have been grievances. That is what we call our special meetings for.

Q. Did you have occasion to commence negotiations with the Falk Company for the purpose of entering into an agreement as to wage conditions, and other conditions?

A. We started to negotiate for working conditions, wage adjustments.

Q. As I understand it, those negotiations were not carried out?

A. They were not.

Q. Why?

A. That was due to the charges filed against the Falk Corporation.

2251 Q. Was it due to the charges filed against The Falk Corporation, or because Mr. Clark, of the Labor Board, suggested that they be suspended?

A. I believe it was in Mr. Clark's—in the letter sent to The Falk Corporation, he said that any agreement entered into with any party should be dropped.

Q. And a copy of that letter was sent to your union, was it?

A. Yes.

Trial Examiner Batten: Well, I presume if you do not happen to have a copy of the letter, that Mr. Rissman would agree that such a letter was sent?

Mr. Lamfrom: I have the original letter here, if you want the record complete.

Trial Examiner Batten: I thought they didn't have a copy of it, Mr. Lamfrom.

Mr. Rissman: Except the witness testified that a copy of the letter was sent to his organization, and no such copy was sent by the Regional Director. Such a copy was evidently received from the company.

The Witness: Yes, from the company counsel to our attorney.

Mr. Rissman: That's it.

Trial Examiner Batten: With that understanding, 2252 I presume you have no objection to agreeing that such a letter was sent?

The Witness: We knew about it.

Mr. Rissman: No.

Trial Examiner Batten: Well, that is sufficient.

Mr. Clark: I think that's all.

Cross-Examination.

Q. (By Mr. Rissman) Mr. Prodoehl, how long have you been a draftsman?

A. About eleven years.

Q. And all of that time were you ever a member of a labor organization?

A. No, sir.

Q. Do you know, at the present time, that there is a labor organization for draftsmen and engineers?

A. I do.

Q. Affiliated with the American Federation of Labor?

A. I do.

Q. And that there is such an organization for men, who do your work affiliated with the C. I. O.?

A. No, I do not.

Q. But you did know about the former?

A. About the A. F. of L.?

Q. Yes.

A. Yes.

2253 Q. And you know also that in Milwaukee there is an Independent Engineers and Draftsman's Association?

A. I do not.

Q. Do you know of the Engineers and Draftsmen of the Allis-Chalmers Company?

A. I know of them, yes.

Q. And do you know they are organized into an independent union of engineers and draftsmen?

A. To take in all companies, or just their own?

Q. To take in all engineers and draftsmen.

A. No, I didn't know that.

Q. When you worked in the Machine Shop, how were you paid?

A. By the hour.

Q. And when you worked in the core room, how were you paid?

A. By the hour.

Q. How are you paid in your present work?

A. By the month.

Q. You have testified that because you have worked in the Machine Shop, in the core room; you have worked right down in the plant, you do not feel there is much difference between you and men who now work in the plant, do you?

A. Not at all.

Q. Do you know if other draftsmen in the Drafting and Engineering Department of The Falk Corporation who have not worked in the plant feel the same way as you do 2254 about it, or whether they feel there is a distinction?

A. There are very few draftsmen up in our department that have not worked in the shop.

Q. How about the engineers?

A. They also must work in the shop to obtain the knowledge necessary.

Q. Did they all start in the shop?

A. Yes, sir.

Q. And graduate to the drafting room?

A. Yes, sir.

Q. You spoke of the officers of the Independent Union. Can you name the officers again for us, and tell us, as closely as you know, from what department each officer comes? Start with the officers.

A. Officers, or directors?

Q. Start with the officers, and then go to the directors.

A. Mr. Wilson, president, he has charge of the Electrical Department and the power house and maintenance.

Q. No, I mean what department does Mr. Wilson work in?

A. Electrical Department.

Q. And the vice-president?

A. Mr. Prodoehl, he has charge of the—

Q. What department do you work in? Drafting Room?

A. Engineering Department.

2255 Q. And the next officer, what department he works in.

A. Secretary. That is Mr. Moebus. He is an expediter, he works in the shop.

Q. He is also commonly known among the men as a stock chaser?

A. If you call him such. He is not a stock chaser. He looks up jobs that are ready for shipment. That is not a stock chaser.

Q. He follows the jobs through?

A. Yes.

Q. And the next office?

A. Mr. Adamski works in the foundry; he is a pieceworker, making cores.

Q. And the others? Just go on through, and name them all.

A. I may miss some. Mr. Mitchka, he works in the Pattern Shop, he has charge of the Pattern Shop, just of the Pattern Shop and the Flask Carpenter Shop. And Mr. Trost, he is one of the directors, in the Machine Shop; and Mr. Martins works in Shop 3, he has charge of the men in Shop 3. Mr. Russetti—

Q. Would you be able to give it to us better if you had a list of the directors in front of you?

A. Well, I can count them; there are thirteen.

Mr. Russetti, he is a night man in the foundry, he has charge of the foundry. Mr. Stickman is a welder, he has 2256 charge of the welders. Mr. Vanderhoe, he has charge of the yard gang, he is a truck driver.

There is one more, he works in the Gear Department.

Q. (By Trial Examiner Batten) I suppose you mean by "charge", representing the union, not representing the Falk Company?

A. That is correct.

Q. (By Mr. Rissman) None of these men you name are supervisory employees of the company?

A. No, or they could not become members of our organization.

Q. They are all employees being paid either a monthly or hourly wage, or salary?

A. Everyone except myself. And Mr. Ewart is a director that has charge of the office.

Q. You say that Mr. Dearth was originally elected to some office?

A. He was.

Q. To what office?

A. Foundry, nights.

Q. What kind of work does Mr. Dearth do in the shop?

A. He has charge of cleaning the castings. He is subforeman, he is not the foreman.

Q. So, in this connection, when you say he has charge, you mean he is in a supervisory position?

2257 A. He is supervising, I would call him a subforeman, he has charge of men cleaning castings in the foundry.

Q. (By Trial Examiner Batten) Who took his place?

A. I believe Mr. Russetti did.

Q. (By Mr. Rissman) I hand you herewith Board's Exhibit No. 27, being the by-laws of the independent Union of Falk Employees, and direct your attention to Article 4, entitled, "Vacancies", and ask you to read that to yourself, please.

A. Yes.

Q. Was Mr. Dearth's successor elected in conformance with that article?

A. We did talk to the men representing the foundry.

Q. But he was elected according to the provisions of this article?

A. I don't remember if he was elected by a vote, or if he was elected unanimously.

Q. This article provides that:

"In case of death, disability, resignation, or otherwise, of one or more of the officers, or directors, the remaining directors, although less than a quorum, shall fill the vacancies for the unexpired term."

So the directors voted for a successors, didn't they?

A. I talked—we talked to the men from the foundry, because we just thought we started the organization, and, 2257½ to give them a fair trial, we thought we would see who they wanted to represent them.

Q. And that procedure you have just described is in accordance with the second paragraph, that says, in part:

"Before a vacancy in the Board is filled, the remaining directors will consult with the members of the department where the retiring director was employed and obtain suggestions from those members as to who shall be appointed to fill such vacancy."

A. Yes.

Q. So that the successor was elected by the remaining directors, after consulting with the members in the department?

A. Yes.

Q. But there was no regular vote taken at any meeting of your union for the election of a successor to Mr. Dearth?

A. I don't know whether there was an election taken or not.

Q. Then you don't know how Mr. Dearth's successor was elected?

A. Yes, as far as they talked it over with the men, and he was named. Whether he was voted or whether he was elected unanimously, I don't recall.

Q. At any rate, the matter was never taken up at any regular or special meeting of the members of the union?

2258 A. I don't know. Just to make it a little clearer, at the first—or at the second meeting, I was at the door, and I wasn't in the hall, so that is why I can't recall.

Q. At the second meeting, was Dearth a director?

A. He wasn't a director. He was out the first meeting of the Board of Directors.

Q. And do you know if the new man was the director at the second meeting of the Board of Directors?

A. The new man?

Q. The man appointed or elected?

A. Russetti? I don't recall if he was there at the time or not.

Q. Was there any regular or special meeting of employees, members of your organization, between the first directors' meeting and the second directors' meeting?

A. Yes, there was.

Q. And that is the meeting where you say you stood at the door?

A. No, this was at the regular meeting, that we hold once a month.

Q. Was there any action taken at that meeting for the election of a successor to Mr. Dearth?

A. That was taken up at the special directors' meeting, after our regular meeting.

Mr. Clark: I think the minutes will clear that up.

2259 Mr. Rissman: What?

Mr. Clark: I think the minutes will clear that up.

Q. (By Mr. Rissman) How were you called down to this meeting under the hospital, Mr. Prodoehl?

A. I don't know; just somebody called up and said they wanted to see me below the hospital. That's all that I know.

Q. Was it on the telephone someone called?

A. Yes.

Q. Did they speak to you?

A. They spoke to the one that answered the 'phone.

Q. And who answered the 'phone?

A. We have three 'phones upstairs, or four—five. I believe we have six now; and if one is busy, the other one is not, and the man that is next to that 'phone answers, and he yells the message.

Q. And the message was for you to go downstairs?

A. That's right.

Q. You didn't know for what purpose you were going down?

A. No, sir.

Q. What time was that?

A. It was in the afternoon, that's all that I remember.

Q. Do you remember the day of the week?

A. Yes, on the 15th, Thursday, the 15th, that is when it was.

2260 Q. Do you remember any of the conversation you heard there at that time?

A. No. I didn't know the purpose of the meeting to start with. They already had a couple of meetings after I found it out, the first time I knew they were holding meetings below the hospital.

Q. Do you recall when you were called down there?

A. Yes.

Q. When you came into the meeting, did you talk to anybody?

A. Yes.

Q. To whom?

A. I don't remember, at all.

Q. What did you talk about?

A. What?

Q. What did you say, what conversation took place?

A. "What is this meeting for?"

Q. What did this person say to you?

A. "They are trying to form a union."

Q. And what did you say?

A. I don't remember now.

Q. You don't remember who that person was?

A. No, I didn't even know how many was at the meeting.

Q. So when you came down there, you didn't know what kind of a union they were trying to form?

A. Not at all.

2261 Q. You didn't know whether it might have been the C. I. O., or A. F. of L., or any kind?

A. No, I didn't.

Q. When did you first find out what kind of a union was being formed?

A. The impression that I got at that meeting was that they wanted to form an independent union, and they had—it seemed that a few of the men were carrying the whole thing.

Q. Which men did it seem were doing that?

A. Mr. Wolf and Mr. Greget and Mr. Landry, and I remember Mitchka and another man from his department, I don't recall his name, and everything was all din, they just were talking it over amongst themselves, how they would go about it, and I don't recall any of the conversation.

The only thing I did was, I sat and listened, because I had just come into the place.

Q. Did anybody say anything about the Drafting or Engineering Department?

A. Yes. When I came down there, they said they would like to have somebody from there represent the Engineering Department.

Q. What did you say?

A. All right.

Q. You said you would represent the Engineering Department?

2262 A. I said, "All right, I will stay here."

Q. After you left that meeting, what did you do?

A. Nothing, because I didn't know anything at all.

Q. When did you attend the next meeting?

A. The following day.

Q. How were you notified of that?

A. By a 'phone call.

Q. After you came back from this meeting on the 15th, did you speak to anybody else in the Engineering and Drafting Department about it?

A. No.

Q. Prior to the meeting of the 15th, had you ever discussed with any of your fellow-employees in your department the organization of a union?

A. No, sir.

Q. Or membership in a union?

A. No, sir.

Q. Or collective bargaining in any form with your employer?

A. No, sir.

Q. Had any of them ever discussed it with you?

A. No, sir.

Q. And you did not discuss it between the meetings of the 15th and the 16th?

A. No, I did not.

Q. And you came back to the meeting on the 16th?

2263 A. I was called down again.

Q. In response to a telephone call?

A. Yes.

Q. Do you know who called you?

A. No.

Q. Tell us where the meeting was on the 16th, and what occurred.

A. At the same place.

Q. Tell us where.

A. Below the hospital.

Q. Yes.

A. Oh, from the conversation, it was that they came back from the attorney, and they went to the attorney, and all of that, and certain men wanted to know what happened. I wasn't interested in the meeting, because it was the second time I was ever called or talked any union, or starting any organization.

Q. It was all Greek to you?

A. Yes, it was.

Q. Did you take part in any of the discussion?

A. No, I didn't. They asked my opinion at times, I remember that, and I said, "I don't know."

Q. And was it known that you were there as a representative of the Drafting or Engineering Department?

A. That is what they told me, they wanted some-
2264 body to represent the draftsmen.

Q. Did you attend any other meetings after that?

A. I attended the 18th.

Q. After the meeting of the 16th, did you ever speak to any of your fellow-employees in your department?

A. Yes.

Q. About these meetings?

A. I had a better idea of what they were doing.

Q. To whom did you speak?

A. I don't recall the particular person or persons who I talked to.

Q. Did you speak to more than one?

A. I think I did.

Q. How many did you speak to?

A. I don't know.

Q. How many men are employed in the Engineering Department, approximately?

A. Approximately about seventy.

Q. Seventy?

A. Seventy.

Q. And you say you spoke to a few of them?

A. Quite a few, yes. They asked me, they got wind of it, I don't know where, or maybe I said something, and then one would talk to the other one, and before long, before I knew it, this fellow and that fellow was stopping me and asking me all about it, and I said I didn't know anything.

Q. Did you ever gather them altogether, all seventy, or a great number of them, and explain to them what these meetings were all about?

A. The meetings of the 15th and 16th?

Q. That's right.

A. I didn't.

Q. Did you ever talk to any great number of them and explain to them what it was all about?

A. No, sir.

Q. Did you ever explain to the men that you had been appointed a representative of the drafting and engineering department?

Mr. Clark: I object to that, as not being a statement of the fact.

Q. (By Mr. Rissman) Or designated as the representative of those departments?

Mr. Clark: I still object.

Q. (By Trial Examiner Batten) I think the evidence is here that prior to any meeting of the Independent Union, they had requested you to represent that department?

A. When I came down to that meeting, then they wanted to have somebody to represent the Engineering Department.

Q. (By Mr. Rissman) Did you ever tell all your fellow-engineers, or any great number of them, engineers and draftsmen, that the people at these meetings said they wanted you to represent the Engineering and Drafting Department?

A. I didn't tell them that I was to represent them.

Q. What did you tell them?

A. They called me down, they wanted some representation from the Engineering Department at these meetings.

Q. Tell some more of the conversation you had with some of these men after the meeting of the 16th.

A. I don't recall any conversation at all, I don't remember what I said or what they said, at all.

Q. You say the men learned that the union was being formed—you say they got wind of it up there?

A. They got wind of it, either through me—I don't know how they got it, I didn't know they were holding a meeting from the first Monday through that week to the 16th, until I was called down on the 16th.

Q. Did the men in your Drafting and Engineering Department manifest an interest in this organization that was being formed?

A. Yes, they did.

Q. In what way?

A. There was quite a few of them up at that meeting on the 18th.

Q. How were they notified about that meeting?

2267 A. A circular came around.

Q. How many of them were at the meeting of the 18th, do you know?

A. I don't know the exact count; just from our department, about twenty of them.

Q. Did you see that many there?

A. Yes.

Q. Did you make it your business to go around and see how many men from the Engineering Department were present at the meeting of the 18th?

A. No.

Q. Prior to the 18th, tell us some of the discussion the men had with you regarding their joining a union, or designating someone to represent them for collective bargaining?

A. They didn't discuss it at all.

Q. When did you and the men in your department first become aware of the necessity of an agent for collective bargaining?

A. Interest was aroused in it after this meeting that was held on the 18th.

Q. What occurred at the meeting of the 18th that aroused the interest?

A. Well, all the men that were there, if they wanted—

if they were going to have any organization, they wanted
2268 to be sure they had some representation in it, and they
didn't know anything about the law. That is why we
called a meeting of the men, and got Mr. Dunne to hold this at
the Republican House, to find out more about it, and what
they could do.

Q. What were the reasons, if you know, that prompted
the men to decide they would go along with this union that
was being formed in the shop, rather than have a union of
their own?

A. Well, that was all talked over at the meeting, the second
meeting we held at the Republican House, and it was
voted on that if we could have a representation in this union
that was being formed, then we would go along with them,
rather than have our own individual unit.

Q. Why did the men feel they wanted a guarantee of representation
in this new union, before they would consent to
going along with them?

Mr. Clark: I don't think there is anything about a guarantee.
I object to it.

The Witness: No, nobody guaranteed us anything.

Q. (By Mr. Rissman) Why did the men feel they wanted
to know they would have representation on this new union
before they would consent to going with it?

A. If we got representation, then they would all go along,
or else they would all pull out again.

2269 Q. Why did they want representation?

A. They know their ends of it a lot better than anybody
else out in the shop does.

Q. Then, is it correct to say that the reason they wanted
to be assured of representation was because they felt their
problems could best be handled by someone in their own department?

A. Correct.

Mr. Rissman: That's all.

Mr. Clark: That's all, Mr. Prodoehl.

Trial Examiner Batten: That's all.

(Witness excused.)

Trial Examiner Batten: Oh, pardon me, Mr. Engelhard?

Mr. Engelhard: No, we have no questions.

WILLIAM EWART, a witness called for and on behalf of the Independent Union of Falk Employees, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Clark) Will you state your name?

A. William Ewart.

Q. How old a man are you?

A. Forty-six.

Q. And where do you live?

A. I am a little bit nervous. You will have to excuse me. 2449 LeFeber Avenue, Wauwatosa.

Q. You are a married man, are you?

A. Yes, sir.

Q. Do you have a family?

A. Yes.

Q. How many?

A. Three; one dead.

Q. You are employed at the Falk plant?

A. Yes.

Q. How long have you been employed there?

A. Since 1915.

Q. And what is your present position?

A. I am in the Order Department.

Q. In the office?

A. Yes.

Q. You are a member of the Independent Union of Falk Employees, are you?

A. Yes.

Q. And one of the directors?

A. Yes.

Q. Were you at a meeting at the Republican House on April 19th, at which members of the office and the Engineering and Drafting Room were present?

A. Yes.

Q. Tell us what happened at that meeting.

2271 A. Well, we got together and decided we wanted to have someone to explain the law to us, so we got hold of an attorney, and he explained the law to us exactly as to what we could do.

Q. Who was the attorney?

A. Mr. Dunne, I believe it was, from

Q. Whitefish Bay?

A. Whitefish Bay, yes.

Q. And tell us what happened at that meeting.

A. Well, he explained the law to us, the State law and the federal law, and told us what we could do, and what we had right to do, and what we didn't have a right to do; so, after setting all the points, some questions were asked, and we adjourned.

Q. Do you remember any of the questions that were asked?

A. Nothing in particular, outside of it was brought up if we could form an independent union of our own; but I don't recall all the questions.

Q. Do you remember a collection being taken up?

A. Yes.

Q. Now, Mr. Ewart, what is the fact as to whether you were at the meeting at the North Side Auditorium on April 18th?

A. April 18th, I wasn't there.

Q. You were not there?

A. No.

272 Q. What is the fact as to whether you were at the meeting on the 24th?

A. Yes, I was at the meeting on the 24th.

Q. Now, to get back, after the meeting of Monday night, were you at any other meetings that week?

A. Yes, we had a meeting on Wednesday night.

Q. What happened there, as well as you recall?

A. The whole office and Engineering Department decided that they would go and join up with the Independent Union.

Q. Were the various organizations discussed that night?

A. Oh, yes.

Q. Was discussion had as to joining the C. I. O.?

A. Yes, that was mentioned, several fellows, I don't know the members of it, but they talked about it.

Q. Was an A. F. of L. organization of any kind mentioned?

A. Yes, that was mentioned rather strongly, too.

Q. Were arguments brought forth in favor of each of these organizations?

A. Well, I don't recall no argument, but there were some brought forth and some brought out against, pro and con.

Q. What action was taken at that meeting, that you remember?

A. They took a vote to join up with the Independent Union, with the shop fellows.

Q. Was any reason given?

2273 A. No, there was no particular reason, outside of just stating that it would be better to have one union for the whole plant, rather than bust up in small groups.

Q. Now, at the meeting of the 24th of April, at the North Side Auditorium, what happened there, if you remember?

A. Well, on the 24th, we got together, and we had a regular meeting, and officers were elected, and so forth.

Q. Directors?

A. Directors, yes.

Q. Were you elected a director at that time?

A. Yes.

Q. By what department?

A. By the office.

Q. (By Examiner Batten) Do I understand that only your department elected you, or the whole membership?

A. No, just our department.

Q. Just your department elected you?

A. Yes.

Q. (By Mr. Clark) Your name was presented to the whole membership after you were elected by your department?

A. Yes.

Trial Examiner Batten: He was elected that night, Mr. Clark, is that it?

Mr. Clark: Yes.

Q. (By Mr. Clark) As I understand it, Mr. Ewart, 2274 these various departments had caucuses, and selected their representative, and then their name was presented to the entire group?

A. Yes.

Q. And the entire group then elected you as a director?

A. Yes.

Q. What is the fact as to whether the directors had a meeting that day?

A. Yes, we had a meeting right after that meeting, that was the first meeting we had.

Q. And officers were elected?

A. Yes.

Q. Now, was it generally known that you were the representative of the office for the purpose of presenting grievances?

A. Yes.

Q. How do you know that?

A. Well, I had plenty of them, I should know.

Q. You had plenty of grievances presented to you?

A. Yes.

Q. From people that you represented on the Board?

A. Yes.

Q. And what was the nature of some of those grievances?

A. Well, some of them may sound a little bit out of line, but one, for instance, was during that hot spell we had, some of them wanted hot lunch to be served, and some of them wanted cold lunches. And another grievance—

Q. What is the fact as to wage grievances being presented to you?

A. Another grievance was with the fellows in the Cost Department.

Q. What was the nature of it?

A. They claimed they were under-rated, according to fellows doing the same job in the plant.

Q. And what, if anything, was done about it?

A. Well, I took it up with the boss.

Q. Any results?

A. Yes, we had a little result. They decided to go through it and make a regular study, as to what is in line, and the first fellow we found out of line, he got his raise, and was brought back up in line.

Q. And that matter is now being investigated, is it?

A. Yes.

Q. And, when the Labor Board lifts its suspension, you expect to go ahead with that negotiation?

A. Yes.

Trial Examiner Batten: Now, just a minute, Mr. Clark. Has the Labor Board got this thing hanging in the air somewhere?

Mr. Clark: Yes.

2276 Mr. Rissman: What Labor Board?

Mr. Clark: The National Labor Board.

Mr. Rissman: May I hear the question? I didn't hear it.

Trial Examiner Batten: My understanding was, they wrote this letter, requesting that no contract be entered into.

Mr. Lamfrom: No. It went a little farther.

Trial Examiner Batten: Did that letter stop all?

Mr. Clark: We understood it that way.

Mr. Lamfrom: May I read my letter, and the reply of Mr.

Clark, just so you may have it? I would like to keep the letter in my correspondence file. For that reason, I would like to be permitted to read it to the Examiner, just for the Examiner's information of what that matter consists of. It will not take but a minute to read it.

Trial Examiner Batten: Go ahead.

Mr. Lamfrom: This is on the stationery of the National Labor Relations Board, Twelfth Region, Brumder Building, Milwaukee, Wisconsin.

"June 8, 1937.

Re: Falk Corporation, XII-C-57.

"Mr. Harold Falk, Vice-President and Works Manager, of The Falk Corporation,
3001 West Canal Street, Milwaukee, Wisconsin.

2277 "Dear Mr. Falk:

"This is to advise you that a formal charge has been filed with this Board by the Amalgamated Association of Iron, Steel & Tin Workers of North America that your company, through its officers and agents, has dominated and is giving insistence to the formation of an alleged independent organization known as the Independent Union of Falk Employees, and that through coercion and intimidation a great number of your employees have been forced to become members of this organization.

"It is my understanding that your organization applied to the Wisconsin Labor Relations Board for recognition as a legitimate independent organization, and that the State Board did refuse to grant such authorization because they were not satisfied that it was an independent organization not controlled by management.

"In view of this development, it is my duty to inform you that until a hearing is held by this Board in regard to the charges above mentioned, that any agreement entered into with this organization by The Falk Corporation will not be considered legal and binding either by the State Board or by the National Labor Relations Board.

2278 "I would advise you that you do not attempt to reach an agreement with any group of your employees until after the hearing, which will be held in the very near future, and of which you will be properly advised through this office.

"Very truly yours,

"Nathaniel S. Clark."

It has his signature, and then, typewritten, "Nathaniel S. Clark, Director, Twelfth Region."

This letter was handed over to me by The Falk Corporation, and I replied as follows, on June 12, addressing it:

"Mr. Nathaniel S. Clark,

"Director, Twelfth Region,

"National Labor Relations Board,

"Brumder Building, Milwaukee, Wisconsin.

"In re: Falk Corporation, XII-C-57.

"Dear Mr. Clark:

"Your letter of the 8th instant to Mr. Harold Falk, Vice-President and Works Manager of The Falk Corporation, concerning charges filed by the Amalgamated Association of Iron, Steel & Tin Workers of North America, has been turned over to me for attention by Mr. Falk.

"Naturally, The Falk Corporation will be prepared to meet these charges.

"You state in your letter that it is your understanding that an organization called the Independent Union of Falk Employees applied to the Wisconsin Labor Relations Board for recognition, and that the State Board refused to grant such authorization because they were not satisfied that it was an independent organization not controlled by management. I communicated with Mr. Frank Burke, attorney, of this city, who represents the Independent Union of Falk Employees, and he advises me that there has been no decision by the Wisconsin Labor Relations Board on the application of the Independent Union of Falk Employees as a union under the Wisconsin Labor Relations Act.

"I am sure that the last paragraph of your letter, based on the fact that the Wisconsin Labor Relations Board made a holding relative to this organization does not reach a conclusion justified by the facts or the law.

"Yours very truly."

This, now, finishes it. There is another letter from Mr. Clark. This will give the whole incident.

Mr. Rissman: I thought we just wanted this letter of Mr. Clark?

Trial Examiner Batten: Does this next letter have any reference to it?

Mr. Lamfrom: This completes it, if the Examiner says:

1046

Witnesses for Independent Union.

2280

"National Labor Relations Board
Twelfth Region
Brumder Building
Milwaukee, Wisconsin.

June 15, 1937.

"Mr. Leon B. Lamfrom,
1416 Bankers Building,
208 East Wisconsin Avenue,
Milwaukee, Wisconsin.

"In Re: Falk Corporation, XII-C-57.

"Dear Mr. Lamfrom:

"Your letter of the 12th instant, stating that The Falk Corporation have turned my letter over to you has been received, and as we stated to you over the telephone, perhaps the charge contained in the last paragraph of my letter was based on hearsay evidence rather than knowledge of same, I retract that portion of my letter, but definitely a hearing will be arranged and held on the charges as stated in the body of my letter.

"As you are the attorney for The Falk Corporation in this matter, you will be duly notified when and where said hearing will take place sufficient time in advance to prepare your case. You will also be supplied with a copy of the charge and the complaint when issued.

"Yours very truly,

"Nathaniel S. Clark",

2281 and, then, in typewriting, "Nathaniel S. Clark, Director, Twelfth Region."

Trial Examiner Batten: We will take a short recess.

(A short recess was thereupon taken.)

Mr. Rissman: May I hear the last question and answer, please?

(Last question and answer read.)

Mr. Rissman: I move that the question and answer be stricken, if the Examiner please, as being improper, and not based upon any facts either in the record or out of the record. There is no suspension by the Board.

Q. (By Trial Examiner Batten) Was it your understanding that the Labor Board had issued an instruction which prevented the directors or you from proceeding to handle any grievances of the men?

A. No. There was no kind of a doubt about it. I didn't question it.

Q. Did you understand that letter to mean that you could not carry on any business with the corporation because of that letter?

A. No. I have been carrying it on since then.

Q. What was your idea of what this letter meant?

A. Well, the letter, it seems to me, my idea was that we should go ahead and finish up what we started, that was about all.

2282 Q. Did this letter mean to you that you were not to enter into any formal agreement pending this hearing, is that what it meant to you?

A. Well, I felt that way about it.

Q. You have continued to handle matters that came to your attention?

A. Handle matters.

Q. Haven't you?

A. Yes, sir.

Trial Examiner Batten: It may stand, I think.

Q. (By Mr. Clark) Now, Mr. Ewart, for the purpose of saving time, I will ask you this question: Were you in the room when Mr. Prodoehl testified concerning the meeting of April 24th?

A. Yes.

Q. If you were asked the same questions, would your answers be about the same as his, to those questions?

A. Yes, they would be just about the same.

Trial Examiner Batten: Mr. Clark, might I ask you, do I recall correctly that this witness said something about attending one of those meetings that the previous witness referred to on the 15th or 16th?

Mr. Clark: No, he didn't.

The Witness: No, I didn't attend none until Monday.

Q. (By Mr. Clark) You didn't attend any meeting
2283 prior to the 19th, at the Republican House?

A. Yes.

Q. As I understand it, is that right?

A. Yes.

Mr. Clark: I think that's all.

Q. (By Trial Examiner Batten) What time was this meeting at the Republican House?

A. It was on a Monday evening.

Q. In the evening?

A. Around that time, about 7:30.

Q. Did you ever do any work in behalf of this work of this organization during working hours?

A. Well, I have talked about grievances, and so forth.

Q. Yes, I understand; but I mean before this meeting,—what was the meeting that you organized at, Mr. Clark?

Mr. Clark: The 24th.

Q. (By Trial Examiner Batten) I mean, prior to the 24th, did you do any work in behalf of this organization during working hours?

A. No, not prior to the 24th, no.

Q. Did you discuss it with other employees?

A. Oh, yes.

Q. During working hours?

A. Yes.

Q. Did any foreman ever tell you that you couldn't?

2284 A. Couldn't what?

Q. Couldn't talk to other employees about it.

A. I understood we couldn't.

Q. My question was, did any of them ever tell you that you couldn't?

A. No. I understood that from the information that we had heard as to that, and the questions that were asked at that meeting, I understood that.

Q. (By Mr. Clark) You understood you were not to talk about any organization—

A. Not to talk about it.

Q. (Continuing) —during working hours?

A. Yes.

Q. If you did talk about it, it was on the sly?

A. Yes.

Q. (By Trial Examiner Batten) Who told you that you shouldn't?

A. There were several questions brought up from the lawyer.

Q. You mean, Mr. Dunne?

A. Yes, that was brought up during the questioning.

Q. I mean, did any foreman or superintendent or man in charge of your department—

A. No.

Q. (Continuing) —ever tell you that you couldn't?

A. No, not at the meeting of the 24th.

2285 Q. When did they start to solicit members of the Independent Union?

A. Well, I don't know when they started. I know when I started.

Q. When did you start?

A. It was before the meeting down at the Republican Hotel, on Wednesday evening.

Q. Let's see. That would be the Wednesday before the 24th?

A. Yes.

Q. When did you get the application?

A. I don't know who handed it to me.

Q. You mean somebody gave you some?

A. Yes.

Q. During working hours?

A. No, that was in the evening.

Q. Did you ever solicit any members or hand out any applications during working hours?

A. No.

Q. Did you ever talk to anybody about joining during working hours?

A. Yes, I have.

Trial Examiner Batten: That's all.

Cross-Examination.

Q. (By Mr. Rissman) When was the first time you heard that office workers could join the Independent Union?

A. Well, there was a question as to—I think it was on a Monday, before the meeting at the Republican Hotel.

Q. When was the first time that you ever attended any meeting of the Independent Union?

A. Well, the Independent Union was on the 24th, a Saturday afternoon.

Q. How did you know about the meeting at the Republican Hotel?

A. I was notified.

Q. By whom?

A. I wouldn't swear, some of the boys said we would get together that night and have the Wagner law explained.

Q. Who said that to you?

A. I don't recall just who.

Q. Somebody in your department?

A. Yes.

Q. Had you ever discussed the Wagner Act with any of your fellow-employees before that time?

A. No, I didn't know there was such a thing.

Q. Had you ever discussed labor organizations with them?

A. We had talked labor organization, yes.

Q. I don't mean in general conversation. I mean, had you ever talked about forming a labor organization for the office workers of the Falk employees?

2287 A. Before that time?

Q. Yes.

A. No, not I.

Q. What did you say when this person asked them to come to a meeting to discuss the Wagner Act?

A. Well, I said, "Sure, I will be there."

Q. You didn't know what the Wagner Act was, did you?

A. No.

Q. Did you know what you were going to the meeting for?

A. I wanted to find out, that's all.

Q. And you didn't know whether the Wagner Act applied to labor relations or the speed of automobiles, did you?

A. Oh, well, I knew it applied to labor relations, but what labor relations I didn't know.

Q. Why did you become interested in wanting to know what the Wagner Act meant at that time?

A. Well, you know, at such a time there was talk of the Wagner Act, and the law.

Q. (By Trial Examiner Batten) And unions?

A. Yes.

Q. And the C. I. O?

A. Sure.

Q. A. F. of L., Independent Union?

A. I didn't know about it.

Trial Examiner Batten: And Works Council.

2288 Q. (By Mr. Rissman) You started to name before some of the grievances you have taken up at the Board of Directors of the Independent Union. Do you remember?

A. Yes.

Q. You said something about hot and cold lunches?

A. Oh, yes.

Q. Tell us some more, what are some of the other grievances you took up?

Trial Examiner Batten: Do you consider it material to the issues in this case, as to what grievances they took up?

Mr. Rissman: It is material to the issues of this case, Mr. Examiner, to indicate that the so-called issues of the Independent Union have nothing whatsoever to do with collective bargaining.

Trial Examiner Batten: Hasn't the matter of a hot or cold lunch something to do with working conditions?

Mr. Rissman: Maybe I am mistaken.

Trial Examiner Batten: No, I am asking you.

Q. (By Mr. Rissman) Tell us some of the other grievances.

A. The fellows in the Cost Department figured they were not in line, as far as salaries were concerned, as fellows in the other part of the plant doing the same class of work, so I went to see the boss about it, so he agreed to take it up and find out what could be done. And—

2289 Q. When were these grievances taken up?

Mr. Engelhardt: Let him finish. He was saying "and".

Mr. Rissman: I am sorry.

Q. (By Mr. Rissman.) Did you finish your answer?

A. It was taken up with the management, and they agreed to make a regular study of it, and see who was out of line, and so forth, like that.

Q. When were these grievances presented to the management?

A. Well, it was presented to the meeting, after the general meeting in May, the office group got together and told me they had grievances. I said, "All right, let's present them."

Q. Were the grievances taken up before the Board of Directors' meeting of your union?

A. No, they were not taken up, not before they were presented to me:

Q. Just tell us what happened. They were presented to you by the individuals?

A. Yes.

Q. Did you take them up with the management?

A. Yes, I took them up with the management the first thing Monday morning.

Q. Who else accompanied you when you took them up with the management, or did you go by yourself?

A. Well, I wouldn't call it the management. I took 2290 it up with the boss of that department. That is what I mean by "management".

Q. You took that up with him yourself?

A. Yes.

Q. You didn't take it to any committee of your union?

A. No, not right away, no.

Q. When did you take it to the committee of the union?

A. Well, we talked over, I think it was the next—we had a meeting together, a special meeting, and we just talked about it a little, that's all, we decided we would thresh it out ourselves, and if it got too bad, we would take it up at the regular meeting.

Q. Do you know how many office workers there are in the Falk Corporation?

A. Well, I wouldn't be sure how many there are. We had about seventeen in the union.

Q. How many of those officers voted for you, for a director, how many of those office workers?

A. Oh, I don't know, it was kind of a close race, and I think we were in a three-cornered tie, if I remember right, and split up. I don't recall just how many voted.

Q. How many votes were cast altogether from the office department?

A. Oh, I don't think I could tell you. I didn't count the votes.

2291 Q. At this meeting at the Republican Hotel, did the employees of the office department decide they would go in with the Independent Union of Falk Employees if they could have a representative of their own?

A. Yes, that was the general tenor.

Q. Do you know why they wanted a representative of their own?

A. The only reason was that the office had a representative in the Works Council then, and we felt that the Works Council had been a good thing, and if that was going to be, we wanted to have a share of it.

Mr. Rissman: That's all.

Redirect Examination.

Q. (By Mr. Clark) With reference to this reclassification, did you take that matter up with Mr. Richard Falk?

A. Yes.

Q. And what did he say to you?

A. Well, he is making a study of the thing right now.

Q. Do you know that he is doing it?

A. Yes. The fellows got a little bit nervous, and I told him he would have to give me something in black and white, so I could show it to the fellows, and he sent me this letter so I could show it around to the fellows.

Q. He was making a study of conditions and wage scales, and things like that?

292 A. Yes.

Q. (By Trial Examiner Batten) I was going to ask you the approximate number of people that were present at the meeting of the 24th.

A. About 400.

Trial Examiner Batten: Are you going to show that by some other witness?

Mr. Clark: Yes.

(Witness excused.)

ALBERT PRODOEHL, a witness called by and on behalf of the Independent Union of Falk Employees, having been previously duly sworn, resumed and testified further as follows:

Examination by the Chair.

Q. (By Trial Examiner Batten) You spoke of attending meeting at the hospital on the 15th and 16th, did you?

A. I did.

Q. That was during working hours?

A. It was.

Q. Did you ever have any money deducted from your check or attending those meetings?

A. I did not.

Q. You received your full pay?

A. Yes.

Q. Who else did you say was at the meeting of the 293 15th, that you remember.

A. Greget, and Wolf, Wilfer, and Mitchka; quite a few others. Those are the only ones that I remember.

Q. Who do you remember being at the meeting of the 16th?

A. I believe the same ones were there again. I didn't take very good notice.

Q. There is testimony here—do you remember what day of the week it was you attended these two meetings?

A. I was positive it was the 15th and the 16th.

Q. Do you remember what day of the week?

A. No, I don't know.

Q. Now, there is testimony here that there was one meeting on the 12th, that is Monday; and two meetings on the 13th, that was Tuesday; and one meeting on the 14th, that is Wednesday; and according to your statement, there must have been, then, a meeting on Thursday and Friday. That is the reason I wondered if you recalled the days. But no matter what date the meeting was on, you attended meetings on two days?

A. I attended two meetings, that's all I know of.

Q. And no deduction was made from your check for the time you spent in those meetings?

A. Not that I know of.

Q. You would know if your check was short, wouldn't you?

A. I get paid by the month, and if I work overtime, I
2294 get paid by the hour.

Q. I say, as far as you know, was any deduction ever made?

A. I don't think I was deducted.

Redirect Examination.

Q. (By Mr. Clark). It is not unusual for you to be away from your usual place of employment for a considerable period of time?

A. It is not.

Q. The boys in the office have occasion, at least sometimes, to go downtown, for instance?

A. They have.

Q. They leave their place of business, and no one knows they are away from it?

A. Some of the fellows always know where you are going, you have got to leave notice.

Q. But it is not unusual to be away from your place of work?

A. It is not, no.

Q. Without it being deducted?

A. No.

Q. You don't punch cards in and out, when you come and go?

A. We punch in the morning and evening.

Q. But if you go out during the day, you don't punch?

A. We do not.

Q. (By Trial Examiner Batten) When you go out downtown during the day, on your personal business, do you check out?

A. We do not.

Q. You just tell the foreman you are going out?

A. If he wants to know, we do it, and if he doesn't—

Q. You don't?

A. No, sir.

Recross Examination.

Q. (By Mr. Rissman) Are there ever deductions while you are on personal business?

A. There are.

Q. On this first meeting of the 15th, I believe you said—

A. Yes, which I believe it is.

Q. Well, assume that is the date.

A. Yes.

Q. You didn't know why you were being called?

A. No. The only thing they told me, to go below the hospital, that was all.

Q. Had you ever gone below the hospital for any purpose before?

A. Not at all. That was the first time I was there.

Q. Were you surprised to receive this call to go below the hospital?

A. I didn't know what they wanted.

Q. Did you know who was going to be there?

A. I did not.

2296 Q. What thoughts, if any, did you have when you received this call?

Trial Examiner Batten: I see no value in this at all. I said to call this man back and ask him one question, and I am not going to open up a whole general examination again. I see no reason for that. The man has been examined and cross-examined. He is back here for only one purpose.

Mr. Rissman: May he answer this question?

Trial Examiner Batten: What was the question?

(Question read by the reporter.)

The Witness: I don't remember. I am called out to the shop four or five times a day. It is nothing unusual for me to be called out.

Mr. Rissman: That's all.

MICRO CARD

TRADE MARK 

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1384

Trial Examiner Batten: Mr. Engelhard?

Mr. Engelhard: No questions.

(Witness excused.)

CARL MENZ, a witness called for and on behalf of the Independent Union of Falk Employees, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Clark) Your name is Carl Menz?

A. Yes.

Q. M-e-n-z?

2297 A. Yes.

Q. How old a man are you?

A. Forty-four.

Q. You are employed at the Falk plant, are you?

A. Yes.

Q. How long have you been employed there?

A. About a year and seven months.

Q. You are a machinist by trade?

A. I am.

Q. And you have been working in the yard out there at the Falk plant?

A. Yes, sir.

Q. You are a married man, are you?

A. Yes, sir.

Q. Do you have a family?

A. Yes, sir.

Q. With reference to the Independent Union of Falk Employees, when did you first know about it?

A. On the 18th, the 18th of April, when they had the open meeting.

Q. On the 18th of April. You have reference to the meeting at the North Avenue Auditorium?

A. Yes, sir.

Q. Just tell us in a general way what happened at that meeting.

2298 A. I went down to the North Avenue Auditorium, and the meeting really was a flop, there was no meeting. Some of the fellows asked for a lawyer, for an attorney's advice, and one of the men spoke up, he said, "Well, we can have a lawyer if you want."

So they called up Mr. Burke, and Mr. Burke came down and gave them legal advice on certain questions.

Q. What do you recall Mr. Burke saying?

A. He mentioned that you could join any organization, he didn't say exactly which.

Q. Did he name them?

A. He named them, yes, sir.

Q. What did he name?

A. The C. I. O., A. F. of L., and any other.

Q. What, if anything, was done at that meeting, if you know?

A. They really asked a few questions and Mr. Burke answered them for them, legal questions, what the boys couldn't answer.

Q. What were the questions about, do you remember?

A. No, I don't remember.

Q. Did they have reference to the Wagner law?

A. They did, yes.

Q. And the rights of the employees under it?

A. Mostly the Wagner law.

299 Q. You know Mr. Fred Wilson, do you?

A. Yes, sir.

Q. How long have you known him?

A. Over a year. I know him since I am working there, but I didn't know him by name in the beginning.

Q. Did you see Mr. Wilson on April 19th, the Monday following the meeting?

A. The 20th?

Q. The 19th, the day following the meeting at the Auditorium.

A. Yes.

Q. Where?

A. Down in the basement office.

Q. What did Mr. Wilson say to you at that time?

A. He asked me if I would go with him to a lawyer and sign certain papers, see a lawyer and sign certain papers.

Q. Did he tell you what he wanted you to sign?

A. After we got down by the lawyer, he explained it to

Q. What did you understand he wanted you to sign?

A. To try to organize a union.

Q. And did you understand the type of organization that was going to be?

A. Yes, sir.

Q. And what is the fact as to whether you went to a lawyer's office with Mr. Wilson?

2300 A. Well, Mr. Burke explained everything.

Q. No. What is the fact as to whether you went to a lawyer's office with Mr. Wilson?

Do you understand that question, Mr. Menz?

Q. (By Trial Examiner Batten) Did you go to the lawyer's office?

A. Yes, I did.

Q. (By Mr. Clark) Whose office did you go to?

A. Mr. Burke's.

Q. And who did you go with?

A. Mr. Wilson, and Joe.

Q. Trost?

A. Trost, and myself.

Q. When you got to Mr. Burke's office, who did you see?

A. I seen Mr. Burke and you.

Q. What did you do after you got there?

A. I signed the papers to organize the union.

Q. Were these papers read to you?

A. Yes, sir.

Q. Did you understand what was in them?

A. Yes, sir.

Q. What do you understand now those papers were?

A. To organize an independent union for Falk Employees.

Q. What is the fact as to whether you checked out when you went to Mr. Burke's office the next morning from your work?

2301 A. I checked out. I didn't get paid for the time I was down there.

Q. You have never been paid for it?

A. No, sir.

Q. Were you paid for that time at a later date?

A. No, sir.

Q. From the union?

A. Yes, I did.

Q. How much was it, do you know?

A. I don't know, I couldn't tell you exactly, four and a half, I guess; four; or four seventy-five, something like that.

Q. After signing these incorporation papers on Monday, when did you next go to Mr. Burke's office?

A. I am pretty sure it was on Wednesday.

Q. And what happened at that time, if you know?

A. Well, he told us that he had by-laws and certain books, and so on, you know what they need it for, for organization;

he was talking about legal seal, that he was going to get a seal for it, and certain other things.

Q. And did he also tell you that the articles had been filed with the Secretary of State's office?

A. Yes, sir.

Q. And also with the Registrar of Deeds' office here?

A. Yes, sir.

2302 Q. Were you at the meeting of April 24th, that following Sunday?

A. Yes, sir.

Q. Saturday, I mean.

A. Yes.

Q. You are not a director or officer of the Independent Union, are you, Mr. Menz?

A. No, sir.

Q. When did you sign an application to become a member of the Independent Union, if you know?

A. I guess it was on the 21st or 22nd.

Q. Of April?

A. Of April.

Q. Have you been at the monthly meetings of this association since?

A. I have been, yes. The last two meetings I didn't, though, I was very busy at home.

Mr. Clark: That's all.

Mr. Rissman: No questions.

Mr. Clark: That's all.

Trial Examiner Batten: That's all, Mr. Menz.

(Witness excused.)

Trial Examiner Batten: I believe before starting with Mr. Wilson, we will take just a few minutes recess, about five minutes.

2303 (A short recess was thereupon taken.)

Mr. Clark: Mr. Fred Wilson.

FRED WILSON, a witness called for and on behalf of the Independent Union of Falk Employees, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Clark) Your name is Fred Wilson?

A. Yes, sir.

Q. How old a man are you?

A. Forty-seven.

Q. Married?

A. Yes, sir.

Q. Have a family?

A. Yes, sir.

Q. You live in Milwaukee, do you?

A. Yes, sir.

Q. You are employed at The Falk plant?

A. Yes, sir.

Q. How long have you been employed at the Falk plant?

A. Nineteen years, with the exception of about two and a half years I had for leave of absence.

Q. When was that?

A. It was during the depression of 1932 or '33, and about seven or eight months in 1934 I think, or '31, '32 and '33, 2304 I am not sure.

Q. During the time that you were away from the Falk plant, what did you do?

A. I worked for the Standard Oil Company.

Q. In what capacity?

A. I managed a service station for them at Thirty-Eighth and Wisconsin.

Q. What is the fact as to whether you have ever been a member of any labor organization, other than the Independent Union of Falk Employees?

A. When I worked for the Standard Oil Company, a fellow by the name of Jack Bronson—John, we always called him Jack—Bronson, he got the idea that the fellows in the service stations were not getting enough money.

Of course, we knew that, we had taken it up with the company a number of times, and we couldn't do anything with them.

Q. Please, Mr. Wilson, before we get into your examination, when I ask you a question, if you can answer it "yes" or "no", will you please do so? I will repeat the question:

Q. What is the fact as to whether you have ever been a member of any labor organization besides the Independent Union of Falk Employees?

A. I have.

Q. What organization was that?

2305 A. Filling Station Operators' Union, I forget the number, affiliated with the American Federation of Labor.

Q. What, if anything, did you have to do with the formation of that union?

A. I was very active in the organizing of it.

Q. When was that?

A. That was in either—I wouldn't swear whether it was in '31 or '32.

Q. And it was while you were working for the Standard Oil?

A. Yes, sir.

Q. Did you have any office in that union?

A. No, sir, I did not.

Q. Are you still a member?

A. No, I don't think I am.

Q. How long were you a member?

A. Until I left the employ of the Standard Oil Company.

Q. With reference to this Independent Union of Falk Employees, what if any office do you hold in that?

A. I am one of the directors, and president of it.

Q. And what is your position at the Falk plant?

A. I am an electrician, in the Electrical Department.

Q. And how long have you been in the Electrical Department of the Falk Company?

A. Ever since I went down there.

Q. What are your duties, generally?

2306 A. Well, new construction and maintenance, more new construction than maintenance.

Q. What is the fact as to whether you were ever a member of the Works Council?

A. No, sir, I never was on the Works Council.

Q. Do you remember the meeting of Falk employees called for the North Avenue Auditorium on April 18th?

A. Yes, sir, I do.

Q. Were you at it?

A. I was.

Q. What if anything did you do at that meeting?

A. Well, I was just a good listener until I thought it was becoming a flop, and of course, I was kind of interested in it, and I wanted—I really in my heart wanted to see some organization whereby the employees could bargain for themselves, and I made a motion that they set the amount of dues, and collect it there.

Of course, I don't know whether anybody heard me or not, there was so much heckling going on over there you couldn't hear anything.

Q. You remember Mr. Burke being there, do you?

A. I do.

Q. You tell us, as well as you can, what you remember him saying

A. Mr. Burke was sent for, and when he came he was introduced to everyone, and he said he came to answer every question that anyone can ask him, and he said, "I object to that. I will answer any question if I am able to do so." He said, "Before I begin, I understand that this meeting is called for the organization of an independent union," and he says, "I want everyone here to understand that it is their right to join either the C. I. O., the American Federation of Labor, or to organize one, it is all up to them," and he said, "Whatever you join, God bless you." That's all he said. That was his opening remarks.

Q. He answered some questions concerning the Wagner law, did he?

A. He did.

Q. What if anything happened at that meeting by way of a motion or resolution?

A. There was never a motion or resolution made.

Q. And is it your understanding that that meeting adjourned without having accomplished anything specially?

A. Yes, it is.

Q. Had you known Mr. Burke prior to that time?

A. I had never seen the man before.

Q. When did you first meet him?

A. After the meeting, in the tavern, down below.

Q. Just tell us about that meeting.

A. I went down after the meeting, and I got over in a corner with a few fellows, and we had a couple of beers, and we got to talking about the possibility or the probability of forming an independent union, and there were some of them that were very anxious, the same as I was, to have an organization of that kind, and I made up my mind then that I was going to introduce myself to Mr. Burke, which I did.

Q. You say you were anxious to have an independent organization. What were the reasons that you had in mind for wanting an independent organization?

A. Well, the one outstanding thing in my mind was the experience I had when I belonged to the Filling Station Operators' Union, when I worked for the Standard Oil Company.

Q. What was that experience?

A. We had drawn up a contract, and we intended to hand it over to the different oil companies. We called in a couple of fellows from the Federated Trades Council to look it over with us, and help us frame the contract. Of course, they vol-

teered their services, and we drew up a contract, and the committee we had, our business agent, took it to the Standard Oil Company,—or the different oil companies in town, but, when they signed it, and he brought it back, it was an entirely different contract than what we had originally drawn up.

Q. What is the fact as to whether it was as favorable as the first one that was drawn up?

A. I should say it wasn't.

Q. (By Trial Examiner Batten) You mean that is your opinion, that it wasn't?

A. I know it wasn't, because I read both of them.

Q. I say, that is your opinion?

A. Yes, sir.

Q. You feel that it wasn't?

A. Yes, sir.

Q. (By Mr. Clark) What other reason did you have, if any, at this time, for favoring an independent union?

A. I figured this way, that I had spent a lot of time with that union, in helping frame this contract, and after I had spent all that time, I figured to myself, "Well, you can't do anything here, it is a cinch nobody else can do it for you, unless you do it yourself." And the main reason, I was so interested and anxious to get an independent union started, whereby I would have some voice in it.

Q. What happened after you introduced yourself to Mr. Burke?

A. I introduced myself to Mr. Burke, I said, "Mr. Burke, I am very much interested in the formation of an independent union, and it is my honest belief that it is a complete flop right now that this is the end of it."

I said, "If I was to get two"—no. I asked him how many it would take to form a corporation. He said, "It will take three signers."

I said, "Will you be?"

Q. Just a minute, Mr. Wilson. With reference to the corporation, did you suggest the possibility of a corporation?

A. Yes, I did.

Q. What did you have in mind with reference to that situation?

A. Well, there had been so much talk around, not only in the shop, but everywhere you went, about the very loose way which the C. I. O. handled their dues, that there is no one who ever gives an accounting of it, where the money goes, or what they do with it. That is my understanding from the talk that has been going around.

Q. What influence did that have on your suggestion for a corporation?

A. I figured that the corporation's books at any time are open for inspection of any member of a corporation, not only the officers or directors, but any member at any time can come and examine the books, and they can find out what is being done with their money.

Q. Now, Mr. Wilson, what did Mr. Burke say in answer to your question about how many men it would take to incorporate?

A. He told me it would take three.

Q. Just tell us what was done by you there.

2311 A. I asked Mr. Burke if he would be in his office the next morning. He said yes. I said, "What time?" He said, "Any time after a reasonable hour." He didn't tell me what time he would be there. I said, "Will you be there at 10:00 o'clock?" He said, "Yes".

I said, "Providing I can find two men in the plant that are willing to come with me and sign those articles of incorporation, I will be there with these two men at 10:00 o'clock in the morning, and we will sign them, and we will get this thing rolling, get it started."

Q. Was that in substance all that was said at that time?

A. Yes. He just agreed to be there.

Q. You did go to Mr. Burke's office the next morning?

A. I did, yes, sir.

Q. With whom?

A. Joe Trost and Carl Menz.

Q. Was Mr. Trost present at this conversation between you and Mr. Burke?

A. I believe he was, I wouldn't swear it. There were two fellows there.

Q. Do you remember his volunteering, and saying he would sign it if you would?

A. No, I don't.

Q. You saw Mr. Menz then the next morning?

A. Yes, sir, I did.

2312 Q. And after going to Mr. Burke's office, what happened?

A. Of course, Mr. Burke knew what we were there for, and I introduced Mr. Trost, whom he already knew, and Mr. Menz, and told him that we had come down to sign the articles of incorporation, and I asked him if he had a copy of them, and he said, "Yes, I have four copies," and he handed

each one of us a copy, and told us to read it with him, and he read it over, and he wanted to know if we understand it.

I said, "Well, there are some things in there that I don't understand," and he explained them to us; what they were, it has been so long ago I just can't remember, but he explained them to us, and we signed them.

Q. Was it your understanding that they were to be filed that day at Madison?

A. Yes, sir. He said he would send them over by special messenger.

Q. When did you next see Mr. Burke?

A. The following morning.

Q. And what if anything was said there?

A. We went in. He said, "Well, the articles have been filed with the Secretary of State." He said, "They are now at the Registrar of Deeds' Office being registered in Milwaukee."

Q. What if anything was done about arranging for a meeting?

A. We talked it over with Mr. Burke, and we decided to have a meeting the following Saturday, which was the 24th.

Q. Was there anything done concerning the form of notice which was to be issued concerning that meeting?

A. Yes, there was. I believe Mr. Burke drew that up for us.

Q. Do you know whether such notice was finally printed and distributed?

A. I do.

Q. I show you what has been marked Independent Union Exhibit No. 1, and ask you if that is the form of the notice that you have reference to?

A. Yes, sir, it is.

Q. And who, if you know, had this notice printed?

A. Mr. Menz.

Q. What was done about where it should be printed?

A. I asked Mr. Menz if he would have a little time to get some printed, and I told him, I say, "When you get them printed, be damn sure there is a union label on them."

Q. And were they printed by a union shop, if you know?

A. Yes, they were.

Mr. Clark: I will offer that at this time, if the Examiner please.

Trial Examiner Batten: It will be received.

(Thereupon, the document above referred to, marked INDEPENDENT UNION OF FALK EMPLOYEES' EXHIBIT NO. 1, was received in evidence.)

2314 Q. (By Mr. Clark) Mr. Wilson, what is the fact as to whether you were at Mr. Burke's office again that week?

A. Yes, I was there twice more that week. I think the next time I was there was on a Thursday, Thursday afternoon I think it was.

Q. When I refer to Mr. Burke's office, you have in mind the office of Alexander, Burke & Clark, do you?

A. Yes, sir.

Q. 110 East Wisconsin Street?

A. Yes, sir.

Q. What, if anything, happened on that occasion?

A. We were called there by Mr. Burke, and he mentioned a few things that we would have to have in the line of books, and everything, and the corporate seal, and we told him to go ahead and get the books and have the seal made, which he volunteered to do.

Q. (By Trial Examiner Batten) You don't mean he was going to get it for you for nothing?

A. Oh, no, no. We were broke at that time.

Q. You said, "volunteered".

A. He just volunteered his services to do that.

Q. (By Mr. Clark) What, if anything, was said by Mr. Burke pertaining to fees for his work done in this registration?

A. He said, as far as his fees were concerned, that 2315 if this Independent Union kept agoing, he would send his fee, to the Independent Union, and the Board of Directors could take it, and, if we thought it was too high, we could come down and talk it over with him.

Q. What is the fact as to whether the office of Alexander, Burke & Clark has rendered a bill to your organization for services?

A. They have.

Q. And what is the fact as to whether payments have been made on that bill?

A. They have been made.

Q. How much, if you know, has been paid to the firm of Alexander, Burke & Clark prior to the commencement of this proceeding?

A. \$200.00.

Q. And how much has been paid since this proceeding has started?

A. Another \$200.00.

Q. Now, you are familiar with the books of the Independent organization?

A. Yes.

Q. On what is that familiarity based?

A. Well, being the president and one of the directors, those books have been audited, and I have been on the auditing committee with the exception of once, and that 2316 is the last time.

Q. How often are they audited?

A. Once a month.

Q. By whom?

A. By the directors.

Q. And who appoints the auditing committee?

A. I do.

Q. What is the fact as to whether, if you know, this organization has paid any money to Mr. Greget for notices that were printed pertaining to the meeting of the 18th?

A. It never paid Mr. Greget for those notices.

Q. Do you know how he was paid for those notices?

A. Only what he told me.

Q. What did he tell you?

A. He told me he took the money out of the collection that was taken on the 18th of April at the North Avenue Auditorium.

Q. Now, Mr. Wilson, why do you feel that the Independent Union of Falk Employees is a competent agency to represent all of the employees eligible for membership, for the purpose of collective bargaining?

A. We have, throughout the shop, elected thirteen directors, and that was our aim, to have a director to represent each and every department, and we have so divided the plant as to be a very workable system, that is the way we figured it out, and I think today it is working just the way we thought it would.

Q. How often has your membership met, if you know?

A. We have had five meetings.

Q. Since April?

A. Well, I am counting the 24th of April as the first meeting.

Q. And how often does your Board of Directors meet?

A. They meet immediately after the close of the regular

meeting for the members, and then they meet at special meetings called by me or by some of the directors, and I would say that we have on the average one a month.

Q. Are minutes kept of the meetings of the membership?

A. Yes.

Q. And are minutes kept of the meetings of the Board of Directors?

A. Of those meetings we have immediately after the regular meeting, yes.

Q. Meetings of the Board of Directors?

A. Yes.

Q. You have minutes of those meetings, do you?

A. Oh, yes.

Mr. Clark: Will you mark this, please?

Trial Examiner Batten: I was just wondering, you want to introduce this for the purpose of showing you do keep regular records, or whatever you want to call them, for the purpose of showing some particular thing in the minutes. My only thought was, you suggested substituting copies.

I was thinking it may hold up the proceedings. I mean, how would we get them to the reporter? If it is your purpose to show there were minutes, and so forth, you and Mr. Rissman may stipulate, or, if there is some particular thing in some meeting you want to show, have the witness testify from the minutes.

Mr. Clark: I think it is for both purposes. My purpose is to have the Examiner have at his disposal all of the minutes of all of the directors and the members.

Trial Examiner Batten: I will be glad to have them.

Have you a copy?

Mr. Clark: I haven't a copy, but I will have.

Trial Examiner Batten: When will you have a copy to substitute?

Mr. Clark: As long as it will take to get them written, probably a day or so.

Trial Examiner Batten: The reason I am asking you is, that under those conditions, you may introduce those. This reporter will be back in Chicago, I presume, when this case finishes, and he is supposed to retain the custody of the records, and I am wondering how we will get the copies.

Off the record.

2319 (Discussion outside the record.)

Trial Examiner Batten: The reporter tells me he

will be here tomorrow, Mr. Clark, so, if you want to go ahead and introduce them, you may do so, and have them to the reporter by tomorrow. That will be Independent Union Exhibit No. 2, will it not?

Mr. Clark: Yes.

Trial Examiner Batten: Consisting of how many pages? Or do you want to show that?

Mr. Clark: A black covered book, styled "Record of Proceedings, Minute Book of Independent Union of Falk Employees," marked Independent Union's Exhibit No. 2.

Q. (By Mr. Clark) I will ask you, Mr. Wilson, if this Exhibit No. 2, which purports to be the minute book of the Independent Union of Falk Employees, contains the minutes of the meetings of the members and the directors that you have referred to?

A. With the exception of the last meeting.

Trial Examiner Batten: As I understand it, Mr. Clark, you want to withdraw the original and substitute a copy?

Mr. Clark: Yes. I will withdraw it at this time, and make that request.

Trial Examiner Batten: It may be received.

Mr. Rissman: No objection.

Trial Examiner Batten: Independent Union of Falk 2320 Employees' Exhibit No. 2.

(Thereupon the document above referred to, marked INDEPENDENT UNION OF FALK EMPLOYEES' EXHIBIT NO. 2, was received in evidence.)

Mr. Clark: This proceeding, as for instance the charter, which I presume is not essential for this purpose, and the by-laws, are copied in here as part of the minutes of the meeting, and that is already in evidence.

Mr. Rissman: You are offering only the minutes?

Mr. Clark: Yes.

Trial Examiner Batten: It will be understood, then, that the articles and by-laws which are part of the minute book, it will not be necessary to substitute copies of those, because they are already exhibits in this proceeding.

Q. (By Mr. Clark) Mr. Wilson, are you familiar with the number of applications that have been signed for membership in the Independent Union of Falk Employees?

A. I am.

Q. Tell us the number, please.

A. 8-9, as of July, I think it was the 26th.

Q. With reference to members who have paid dues, how

many members have paid dues to this organization, that you know of?

A. 819.

Q. As I understand it, then, there are fifty other 2321 applications signed, but who have not paid dues?

A. Yes, sir.

Mr. Clark: I don't know how to exactly handle this. There are 818 of these applications.

Mr. Rissman: Beg pardon?

Mr. Clark: These are the applications. I would like to make them part of the record, but I don't know whether we should let them get away.

Trial Examiner Batten: Do you want to substitute copies for all of them?

Mr. Clark: We could, if we had time.

Mr. Rissman: Couldn't we do this? Off the record.

Trial Examiner Batten: Very well. Off the record.

(Discussion outside the record.)

Mr. Rissman: Has Mr. Wilson counted them?

Mr. Clark: I don't know whether he has or not.

The Witness: Yes, I have counted them.

Mr. Rissman: Why don't you introduce the blank? You have testimony as to the number?

Trial Examiner Batten: This is off the record.

(Discussion outside the record.)

Mr. Clark: Mark this, please, Independent Union Exhibit 3.

Q. (By Mr. Clark): I show you what has been marked Independent Union Exhibit 3, and ask you what it is, if 2322 you know.

A. That is an application for membership in the Independent Union of Falk Employees.

Q. And the applications that I have referred to as being in the bound book contain applications similar to this?

A. Yes.

Q. And there are some applications in that book which are similar to Board's Exhibit number— Change that part of the question. It is Local No. 311's Exhibit No. 2.

Trial Examiner Batten: Just a minute. Is that the application of yours?

Mr. Clark: Yes.

Trial Examiner Batten: Or is that the application of Local 311?

Mr. Clark: Of ours.

Trial Examiner Batten: They have introduced a copy of their application, so you want to be sure.

Mr. Rissman: Let's take a minute, and see.

Mr. Clark: Let's see Exhibit 32, please.

Trial Examiner Batten: 32 is the proper exhibit. Board's Exhibit 32?

Mr. Rissman: Yes, it is.

Mr. Clark: Strike that last question.

Q. (By Mr. Clark) Referring to Board's Exhibit No. 32, Mr. Wilson, what is the fact as to whether several of 2323 the signed applications in this bound book are on this form of application?

A. They are.

Q. Now, what is the fact as to whether the minutes of your directors will show negotiations had with your employer concerning grievances taken up with the employer?

A. They will show that.

Q. And what is the fact as to whether negotiations had between your organization and The Falk Corporation will be shown in the minutes?

A. You mean the ones we presented to the company?

Q. Yes.

A. They will be shown in the minutes.

Q. Now, as I understand it, your organization was negotiating with The Falk Corporation for the purpose of entering into a contract concerning hours of work and wages?

A. Yes, sir.

Q. When were those negotiations carried on?

A. Where?

Q. When?

A. Along in May sometimes, May or June.

Q. Why were they discontinued, if you know?

A. They were discontinued on account of a letter written to The Falk Corporation by the National Labor Board, and signed by Mr. Clark.

2324 Q. You have reference to the letter signed by Mr. Clark as the Regional Director, in which he says that because of the fact that the Wisconsin Labor Board had turned down your application for listing, any negotiations carried on would be illegal?

Mr. Rissman: I object to the question. He might ask the witness if he refers to the letter that Mr. Lamfrom read into the record, and the letter will speak for itself.

The Witness: Yes.

Mr. Clark: All right.

The Witness: Yes.

Q. (By Mr. Clark) With reference to the letter Mr. Lam from read into the record?

A. Yes, that is the letter.

Q. What are the facts as to whether the Wisconsin Labor Relations Board have ever turned down your organization for listing?

A. They have never turned us down.

Q. (By Trial Examiner Batten) Did you ever apply for listing?

A. Yes.

Q. How long ago?

A. In April.

Q. Did you ever hear anything from them?

A. I did.

2325 Q. What did they say?

A. They said it was held up there, that's all, until we offered more evidence to prove it was an independent union, and not dominated by the corporation, The Falk Corporation.

Q. Have you submitted additional evidence?

A. I think Mr. Clark made a trip to Madison, and when he got there, the man at Madison was in a hurry, I think Mr. Clark said he was going to Janesville.

Q. So there has never been any decision on that, then?

A. No, there has never been any decision.

Q. (By Mr. Clark) As a matter of fact, you requested the Labor Board to withdraw your application?

A. Yes.

Q. After the charges were filed in this matter?

A. Yes, I did.

Q. Are you familiar with the matter taken up by your organization concerning the discharge of certain men?

A. Yes, sir, I am.

Q. Tell us about that.

A. We took the matter up with the management. Mr. Harold Falk was there, and I had a little note, a sort of a memorandum, of what we wanted to present to him, to make those requests. We demanded the immediate reinstatement of three men who had been discharged.

Q. Who were those three men?

2326 A. I don't know whether I can recall their names or not, but one welder, and two inspectors. I think the welder was Fred Douglas.

Q. Would their names appear in the minutes of their organization?

A. Yes, they do.

Q. Were they members of your organization?

A. No, sir.

Q. Do you know whether they were members of the C. I.

?

A. They were all three members of the C. I. O.

Q. And what is the fact as to whether these men were re-stated after you requested that they be reinstated?

A. Yes, they were.

Q. And who notified them of their reinstatement?

A. Our secretary, Mr. Moebus.

Q. (By Trial Examiner Batten) Were they appealing to our Board of Directors that they had been discriminated against?

A. Yes, that was my opinion.

Q. In other words, you felt that because of their activities the C. I. O., the company had discriminated against them their discharge, and for that reason you asked that they be reinstated?

A. Yes, that was my opinion, and I so expressed it to the Board of Directors. Of course, I never did find out why they were discharged.

27 Q. But that is the reason you took up the case?

A. That is the reason I took it up, sure.

Q. (By Mr. Clark) You felt that being a bargaining agent for all of the employees, that you should represent them, as well as your own members?

A. Absolutely.

Q. What is the fact, Mr. Wilson, as to whether your organization has anything to do with the operation of the can-

en?

A. No, we have not.

Q. (By Trial Examiner Batten) Are they still running

A. Yes.

Mr. Clark: I would like to offer, in connection with Mr. Wilson's testimony, the last exhibits.

Trial Examiner Batten: They may be received.

(Thereupon, the documents above referred to, marked IN-DEPENDENT UNION OF FALK EMPLOYEES' EXHIBITS NOS. 2-A, 2-B and 3, were received in evidence.)

Q. (By Mr. Clark) Are you familiar with the departments represented by your Board of Directors?

A. Yes, I am.

Q. And do you know the number of representatives from each department?

A. I am pretty sure that I do.

Q. For the purpose of refreshing your recollection,
2328 I show you a memorandum which purports to describe the departments and the number of representatives. Is that correct?

A. No, that is not. In the foundry, we intended to give four, four directors. We had forgotten the Welding Department. We took one representative from the foundry, and gave him to the Welding Department, we made another department out of it.

Q. The Examiner has asked for a compilation of the departments and the representatives on your Board of Directors. You can have that prepared by morning, can you?

A. Oh, yes.

Trial Examiner Batten: It will be understood, Mr. Clark; when he presents that here in the morning—although it will be another case—that the reporter may receive it.

Mr. Clark: Yes.

Trial Examiner Batten: As a part of the records in this hearing.

Mr. Clark: Sure.

Trial Examiner Batten: And can it be understood that it will be marked Independent Union Exhibit No. 4, is that agreeable?

Mr. Lamfrom: It is agreeable to us.

Trial Examiner Batten: If there is no objection, it will be so received.

2329 Mr. Clark: I think that's all.

Cross-Examination.

Q. (By Mr. Rissman) Mr. Wilson, I hand you the bound book of application cards of the Independent Union—

Trial Examiner Batten: Apparently we are not going to finish right away, I think we will recess for about five minutes.

(A short recess was thereupon taken.)

(Witness withdrawn.)

JOSEPH CIBULKA, a witness called by and on behalf of the Respondent, having been previously duly sworn, resumed and testified further as follows:

Examination by the Chair.

Q. (By Trial Examiner Batten) You were on the stand yesterday, were you not?

A. Yes, sir, I was.

Mr. Engelhard: Did you want to ask him a question, Mr. Examiner?

Trial Examiner Batten: I think I do, just preliminary.

Q. (By Trial Examiner Batten) You testified yesterday regarding a certain memorandum?

A. Yes, sir.

Trial Examiner Batten: Off the record.

(Discussion outside the record.)

2330 Q. (By Trial Examiner Batten) That memorandum included deductions which were made covering what period of time?

A. April 12th, 13th, 14th and 15th.

Q. That did include, then, some deductions on the 15th?

A. Yes, sir.

Q. And who was deducted from the 15th?

A. I couldn't say. This list is a summary, covering all four days.

Trial Examiner Batten: I understood you to say yesterday it covered the 12th, 13th and 14th.

Mr. Engelhard: No, I think he testified he got it up to the 15th.

Mr. Lamfrom: He has it written down here on the memorandum.

Q. (By Trial Examiner Batten) Do you know who were deducted for the 15th?

A. I couldn't tell off of this list. This is a summary of the deductions for the four days.

Q. Do you have your papers there that you made the summary from?

A. I don't know whether I have them or not.

Mr. Rissman: Off the record, if the Examiner please. I think you might ask him if he has Mr. Prodoehl's name.

The Witness: I have not.

Q. (By Trial Examiner Batten) You haven't Mr. 2331 Prodoehl's name?

A. No, I know that.

Q. Now, have you the memorandum there from which you made this summary?

A. I have a memorandum there, but it does not give us any more detail than this one here.

Q. Well, as far as I am concerned, if it doesn't contain this man's name, Prodoehl, that's all I am concerned about.

A. Prodoehl is paid on the monthly salary basis, and we pay for any reasonable absence on a monthly salaried man.

Redirect Examination

Q. (By Mr. Lamfrom) That is, it is not the practice of The Falk Corporation to deduct from salaried men any of their remuneration, when these absences are for a reasonable time, or for a reasonable purpose?

A. That's right.

Q. And they do not use the time-card system?

A. They use it to a certain extent, although not in the same detail in which our shop or machine operators use them.

Q. Would the company officials have knowledge of the fact that a man like Mr. Prodoehl would absent himself from the department in which he worked, and go some other place for an hour or two, would that be brought to the attention of the company officials by anybody?

A. Not to the company officials, I don't believe a 2332 matter of that kind would be brought to the attention of the officials.

Q. To whose attention would it be brought?

A. It may be brought to the attention of the departmental supervisor.

Q. Have you any information as to whether or not this particular absence of Mr. Prodoehl—on April 15th, was it?

Mr. Engelhard: The 15th, I think that is what he testified to.

Q. (By Mr. Lamfrom) On April 15th, when he testified he attended a meeting, was it brought to the attention of the supervisor?

A. I have no knowledge whether that was done or not.

Q. Is it a matter of quite frequent occurrence that the monthly salaried employees do absent themselves for reasonable periods of time without any deduction?

A. Oh, yes, that is the regular occurrence—I wouldn't say regular, but I would say it is an occurrence which happens, I would say, every day.

Q. As regards some of the monthly salaried employees?

A. Yes, that's right.

Q. And how long has that been the practice or the custom of the company?

A. As long as I am connected with the payroll, which is about fourteen or fifteen years.

2333 Mr. Lamfrom: That's all.

Trial Examiner Batten: That's all.

Mr. Engelhard: I would like to ask just one question, or maybe more than one.

Q. (By Mr. Engelhard) Mr. Cibulka, I understand that in making out your payroll, the men had a yellow card for their regular working hours?

A. They had a—

Trial Examiner Batten: Are you talking now of the production men?

Mr. Engelhard: Yes. The production men had a yellow card.

Trial Examiner Batten: Mr. Engelhard, I am afraid I will have to hold you to the same thing I did someone else a few moments ago.

Mr. Engelhard: I merely want to indicate how the two cards are used.

Trial Examiner Batten: Well, it has already been testified to in the record, a yellow card and a blue card.

Mr. Engelhard: Not by this man, though.

Trial Examiner Batten: It is a matter of evidence here, I don't think there is any misunderstanding. There is a yellow card in the morning, when they come in. When they go out during the day, they put it in the time-clock and punch it on the blue card. When that comes into the office, the
2334 blue card is deducted from the amount of time on the yellow card, in some way they estimate the time spent; from the blue and the yellow cards.

Q. (By Mr. Engelhard) Is that correct, Mr. Cibulka?

A. The yellow card is the one which is kept in the man's rack or a pay period. It contains sufficient space for punching a half month's period. The blue card which was referred to—By the way, that should be a white card.

Q. (By Trial Examiner Batten) Some of them said here "blue".

A. Well, we have changed colors since that time.

Trial Examiner Batten: All right.

The Witness: Anyway, that is the daily cost card, which contains a distribution of the work which he did on that particular day. A man may work eight hours. That eight hours would register on the yellow card. To balance that eight hours, he would have, say, four or five white cards, which would be distributed to the various jobs on which he worked.

Q. (By Trial Examiner Batten) Who writes up at the head of the white card, so that you would know what the job was that he was on during that time?

A. That varies in departments. In some departments, the workman himself makes that note, and in others they have departmental timekeeper.

2335 Q. Then you have the cards, have you not, either the blue or the white cards, in your records, for all these deductions you made?

A. We did have them at that time.

Q. Where are they now?

A. Those cards are retained for a period of approximately two months, we summarize those cards at the end of the months for our ledger entries, and after we have summarized them, we have no further use for the time cards, and they are kept for a period of approximately two to three months.

Q. And then you destroy them?

A. Then we destroy them.

Q. When did you destroy the cards of these meetings that refer to the meetings of April 12th, 13th and 14th?

A. I don't know when they were destroyed.

Q. Then the information you have as to the deductions, from what record did you take that?

A. I took that from these white cards referred to in the testimony, these cost cards.

Q. That is what I am getting at. Do you still have those?

A. No.

Q. When you made this summary, which is now an exhibit, where did you get the number of hours that you deducted from each employee for the time spent in these meetings?

A. At that time, those daily cost cards were still available. I made this out approximately May 1st, somewhere in there.

Q. When you deducted on the next payday?

A. That's right.

Q. So you at that time had those cards?

A. We had them at that time, yes; that was the basis of our estimation.

Q. (By Mr. Engelhard) Do I understand that this summary was made from your ledger?

A. No, no.

Trial Examiner Batten: He made it away back at the time he actually made the deduction.

Q. (By Mr. Engelhard) I mean this particular memorandum that we had yesterday, from which you testified, when did you make that memorandum?

A. This was made at the time the deductions were made.

Q. This memorandum on there?

A. This one here. That is a copy of this here (indicating). I don't know if it was this particular sheet of paper, but for the evidence, I copied it off of the original notice of deduction.

Q. That is for the purpose of deducting from the pay checks?

A. That's right.

Q. (By Trial Examiner Batten) Do you recall what any of these white cards said at the top? What did it say?

2337 A. "Attendance at meetings."

Q. "At meetings"?

A. That's right.

Q. It did not designate any meetings?

A. Some of them may have, I don't know. They usually merely write down "meeting".

Q. Have you any recollection now that any of them stated what meeting, or where, or anything?

A. I don't know. They may have stated "Works Council Meeting", but I am not sure of that. They are usually very brief about that. In many cases, they merely write down "meeting".

Q. Of course, I presume the reason they went through your department was that whoever handled the cards assumed that is the kind of meeting it was, they assumed it was a Works Council meeting?

A. Well, our clerical force has no knowledge of the different meetings.

Q. It wasn't called to your attention?

A. No, not specifically. That was handled as a matter of routine.

Trial Examiner Batten: That's all as far as I am concerned.

Mr. Rissman: No questions.

Mr. Lamfrom: That's all.

2338 Trial Examiner Batten: That's all.

(Witness excused.)

Mr. Clark: Before the cross-examination commences, would like to ask a few questions in explanation of some testimony of Mr. Wilson.

Trial Examiner Batten: You would what?

Mr. Clark: In explanation of some testimony given by Mr. Wilson, I would like to straighten out some matters.

Mr. Rissman: He just wants to continue his direct examination.

Trial Examiner Batten: Oh, yes. Go ahead.

FRED WILSON, a witness called by and on behalf of the Independent Union of Falk Employees, having been previously duly sworn, resumed and testified further as follows:

Direct Examination (Continued).

Q. (By Mr. Clark) Mr. Wilson, you were asked a question by the Examiner, as to whether you thought these three men who had been discharged had been discriminated against, and as I understand it, you answered "yes".

Have you any explanation to make as to that answer at this time, what is your understanding?

A. Well, I didn't really mean they were discriminated against. What I meant to say was that that Saturday they were fired, there was an awful uproar in the plant.

2339 They intended to work all day, and all of a sudden the order came out to close at noon. This was about fifteen minutes to 12:00. Of course, I went around and asked some of the fellows why the order came out. They said there had been a fight up in the end of No. 2 Shop, that they had threatened a couple of fellows; in fact, that one fellow had hit another one.

Q. Is it your understanding that these men who had been discharged were in this fight?

A. Well, that was my understanding, that they had been in that fight.

Q. Was it your understanding that is why they had been discharged?

A. Yes, that is the understanding I had, that that is why they had been discharged.

Q. And you asked that they be reinstated for what reason? What reason did you give for asking they be reinstated?

A. I told Mr. Falk that I thought that under the circumstances that existed that morning at the plant, I thought, or we thought, that the management had acted kind of hastily. Everybody was in an uproar around there. I didn't—Well, I just wanted them back, because I thought they had acted kind of hastily, even though there was a fight, according to what I heard.

Q. You didn't think they were discriminated against 2340 because of their activity in the C. I. O.?

A. Oh, no, no, no, I should say not. I didn't mean that, not for a minute.

Q. (By Trial Examiner-Batten) At least you felt that they were unjustly discharged? Otherwise, you wouldn't have taken it up.

A. Well, to a certain extent.

Q. That is what I mean. It is not a matter of degree with me. If you felt that the company had properly and justly discharged the men, you would not have interceded for them, would you?

A. Oh, yes.

Q. You would try to get them back, even though you thought they ought to be fired?

A. Sure, I would, if I didn't know the exact reason why they were fired, certainly. I figure that is one of my duties as a representative of the men working in the plant.

Q. You mean, any man that is discharged, you feel it is your duty to try to have him taken back?

A. Sure.

Q. No matter what the reason is?

A. I don't care what the reason. I will go over and fight for it.

Mr. Clark: That's all.

2341

Cross-Examination.

Q. (By Mr. Rissman) Who asked you to take up the cases of these men, Mr. Wilson?

A. No one. I took it up before the Board of Directors, I

called the directors together one night, and told them that these fellows were discharged, and asked them if it would be all right if we would take it up with the management.

Q. Did you know at the time you took it up with your Board of Directors the reason for the discharges?

A. Only from hearsay. I knew there was a lot of trouble there in the shop.

Q. Do you recall the names of the three men?

A. The welder's name was Fred Douglas.

Q. Let me refresh your recollection. Was the other one Hugo Hahn?

A. Yes.

Q. And Jim Jacobus?

A. Yes, those are the names.

(Here follow proceedings later expunged from the record, by direction of the Trial Examiner.)

Trial examiner Batten: I think we will recess a few minutes, and see if we can have this night session.

(A short recess was thereupon taken.)

Trial Examiner Batten: I think we are ready to proceed.

2342 After a conference, the Examiner has decided it will not be necessary to hold any evening session. We will finish now, and the Examiner is instructing the reporter to withdraw the last exhibit numbered 38, and all questions and answers and discussion relating thereto, from that point on, and it will be expunged from the record, physically stricken and not put in the record.

Mr. Lamfrom: As I understand it, from the first question Mr. Rissman asked this witness with reference to this exhibit?

Trial Examiner Batten: Yes, from the time the exhibit was marked down to the time that I started to make this statement, it will be expunged from the record.

Mr. Rissman: Mark this Board's Exhibit 38. This is another exhibit, if the Examiner please.

Q. (By Mr. Rissman) Mr. Wilson, I hand you Board's Exhibit No. 38, and ask you if that is one of the letters sent by the secretary of the Independent Union of Falk Employees to one of the discharged men?

A. I have never seen it before.

Q. Oh, I see.

A. He sent these under my instructions. I told him to get in touch with him. I never saw it.

Q. You never saw the letter?

A. No.

2343 Q. You don't know what that letter said, or what information it contained?

A. I instructed him to get in touch with all three of them, and he said he got in touch with two of them by 'phone, but he would get in touch with the third one by letter.

Q. But you do know that none of these three employees ever asked you, or your union, to intercede for them?

A. No, they never.

Q. What was the conversation you had with Mr. Falk about these three men, do you recall?

A. Well, I don't recall it all. I know that he objected very strenuously at the start to rehiring any of them. He said he thought, in his own mind, that he was really justified in discharging them, and after a lot of discussion and arguing, he finally said he would take them back, but he would talk with them before they were rehired.

Q. You have testified that Joe Trost, Carl Menz and yourself went to Mr. Burke's office following the meeting of Sunday, April 18th. Do you recall that testimony?

A. I said we went there the next morning, Monday, Monday morning we went there.

Q. That would be Monday the 19th?

A. The 19th, yes, sir.

Q. And what time was your appointment at the office?

A. At 10:00 o'clock.

2344 Q. In the morning?

A. Yes, sir.

Q. Did you obtain permission from anybody to leave your work?

A. I asked Mr. Mitchell if I could go downtown for a couple of hours, and he said yes.

Q. Who is Mr. Mitchell?

A. He is the chief electrician.

Q. Are you paid by the month, or by the hour?

A. By the hour.

Q. Were you docked for the time you were away from the plant?

A. Yes, I punched my attendance card out when I left, and punched it back in when I came back.

Q. When you came to Mr. Burke's office, he had the incorporation papers all ready for you to sign?

A. Yes, he did.

Q. And the first time you spoke to him about incorporation papers was Sunday afternoon, the day before?

A. Yes.

Q. How many people were at the meeting of April 24th, Mr. Wilson?

A. I didn't count them, but Mr. Moebus said he counted them, and as I recollect, I wouldn't be sure of the number, but I am pretty sure he said 489.

2345 Q. You stated that Mr. Greget paid for the notices and applications he testified about out of the money that was collected that first day?

A. That is what he told me.

Q. Do you know how much he paid?

A. No, I don't.

Q. Did you hear him testify here how much he collected?

A. Not that I recall.

Q. You have been here through the entire hearing, haven't you?

A. Yes.

Q. Didn't you hear him testify that he collected something like seventeen or eighteen dollars?

A. Not at the meeting of the 18th. He collected that at a meeting that was held under the hospital, as I recollect his testimony.

Q. Out of which collection did he pay for the printing?

A. He told me he paid it out of the collection that was taken up at the North Avenue Auditorium.

Q. You don't know how much he collected at that time?

A. No, I don't.

Q. You don't know if he collected more or less than the amount of the printing?

A. No, I wouldn't swear to it.

Q. You have before you now, Mr. Wilson, the bound 2346 book exhibit, of the union application cards?

A. Yes.

Q. Some of the applications are written on forms similar to Board's Exhibit No. 32?

A. Yes, sir.

Q. And some are written on applications similar to Independent Union Exhibit No. 3?

A. Yes, sir.

Q. When did the union stop using Board's Exhibit No. 32 as the form of application?

A. I don't just recall how long ago it was, but we ran out of those applications.

Q. You ran out of which kind? Board's Exhibit No. 32?

A. Yes.

Q. And then you started to use Independent Union—

A. Then we had these printed.

Q. (Continuing)—Independent Union Exhibit No. 3?

A. Yes.

Q. Will you thumb through the book, Mr. Wilson, and tell us approximately what percentage of the applications you see there are on the form similar to Board's Exhibit No. 32, this one?

A. The percentage?

Q. About how many. Just thumb right through them.

A. My best guess would be about 95 per cent of them.

2347 Q. And the remainder would be on the form indicated as Independent Union Exhibit No. 3?

A. Yes. If you wish me to, I can give you the exact date we got those up; from a canceled check stub.

Q. That isn't necessary.

A. This is so long ago it is hard to remember right off-hand.

Q. The forms on which you say about 95 percent of the applications are written are the ones that were paid for by Mr. Greget?

A. Yes, sir.

Q. Mr. Wilson, who are members, or what employees of The Falk Corporation are members of the Independent Union?

A. Any employee of The Falk Corporation, with the exception of the management, superintendents, assistant-superintendents, foremen and assistant-foremen.

Q. The membership of that organization is limited only to people employed by Falk?

A. Yes, sir.

Q. And if an employee resigns or quits his employment with the company, does his membership automatically cease?

A. Yes, sir.

Q. And if an employee is discharged for cause by the company, does his membership in your union automatically cease?

A. Unless he is reinstated.

2348 Q. If he is not reinstated, his membership ceases to exist?

A. Yes, sir.

Q. And for how long a period after he is discharged, do you carry him on your books as a member?

A. Well, as soon as we find out he is discharged, we immediately try to find out why, and if there is good reasons, it is taken up by the Board of Directors, and talked over, as to the advisability of asking the management to reinstate him, and then—well, we haven't had any cases exactly like that, but then it would be my purpose and aim to go back to the management and see if we couldn't have him reinstated.

If he refused on good grounds, that is, if he had good grounds for discharge, and if he refused to reinstate him, his membership in the union would immediately cease.

Q. Mr. Wilson, you have testified that on April 18, 1937, either at the meeting or in the tavern after the meeting you spoke to Mr. Burke, the attorney, about a corporation?

A. Yes, sir.

Q. Where did you learn, or how did you know that it was necessary or advisable to incorporate an organization of the employees?

A. Well, I figured that by forming a corporation, it would be a more sound institution than if we didn't incorporate.

Q. Where did you get the idea or the thought that a corporation would be a more sound institution than an unincorporated organization?

A. Well, I know that in a corporation, the books of the corporation are open for inspection, of any of the stockholders or members of such corporation.

Q. Had you ever had any experience with corporations?

A. Not in forming them, no.

Q. Or as a member of one?

A. No.

Q. Then, how did you know that books of corporations were open for inspection?

A. Well, I have read quite a bit. I imagine I picked it up in some book I read.

Mr. Rissman: Mr. Clark, attorney for the Independent Union, has stipulated that the signature appearing on Board's Exhibit 38, for identification, is the signature of Bernard Moebus, the secretary of the Independent Union of Falk Employees.

I now offer BOARD'S EXHIBIT NO. 38 in evidence.

Mr. Lamfrom: What is that?

Mr. Rissman: That is that letter.

Trial Examiner Batten: It will be received.

(Thereupon, the document above referred to, marked

BOARD'S EXHIBIT NO. 38, was received in evidence.)

2350 Trial Examiner Batten: This doesn't need to be in the record.

(Discussion outside the record.)

Mr. Rissman: That's all.

Mr. Lamfrom: I haven't anything.

Examination by the Chair.

Q. (By Trial Examiner Batten.) Mr. Wilson, just one question:—

Trial Examiner Batten: What was the meeting, Mr. Clark, at which they organized? I have forgotten just the date.

Mr. Clark: The 24th of April.

Q. (By Trial Examiner Batten.) Where was that meeting held?

A. At the North Avenue Auditorium.

Q. How long did the meeting last?

A. The meeting of the members lasted, I would judge, approximately three hours.

Trial Examiner Batten: That's all the questions I have.

Mr. Lamfrom: Do you close your case?

Mr. Rissman: Yes.

Mr. Lamfrom: Case closed all around.

Trial Examiner Batten: Is that all, Mr. Clark?

Mr. Clark: Yes.

Trial Examiner Batten: Well, the record is closed,
2351 now.

Mr. Lamfrom: With reference to motions?

Trial Examiner Batten: I mean, as far as evidence, and so forth.

(Witness excused.)

Trial Examiner Batten: I presume, before Mr. Lamfrom makes some motions, I should pass upon some which have been previously made. I think, at the close of the Board's case, I reserved my opinion on, I think, six motions, five with respect to the separate allegations of the charges in the complaint, and one as to the so-called Omnibus Section.

Is that right, Mr. Lamfrom?

Mr. Lamfrom: That's right.

Trial Examiner Batten: Each of those motions is denied at this time.

You may proceed, Mr. Lamfrom.

Mr. Lamfrom: For the Respondent, now, I move, upon all of the evidence which has been submitted, for the dismissal of the petition and the complaint, on the same grounds as alleged in the motions made at the time of the close of the Board's case. That is, I need not repeat the reasons here. The reasons are based now upon all of the evidence.

Trial Examiner Batten: That is, you are making the two general motions, and also the six separate motions?

2352 Mr. Lamfrom: That's right.

Trial Examiner Batten: The Examiner will deny both the general motions and the six specific motions.

Mr. Lamfrom: It will be understood that these motions are now made, all of them, on the evidence as it now is in, in the entire proceeding.

Trial Examiner Batten: In other words, the motions are being renewed on the basis of all of the evidence?

Mr. Lamfrom: That's right.

Trial Examiner Batten: At the hearing?

Mr. Lamfrom: That's right.

Trial Examiner Batten: Are there any further motions?

Mr. Clark: I should like to make a motion on behalf of the intervener, the Independent Union of Falk Employees, to dismiss, on all of the testimony had in the record, that portion of the complaint having to do with the Independent Union of Falk Employees being in violation of the Wagner law, I can't find it at the moment. I think it is Paragraph 10 of the complaint.

Trial Examiner Batten: I presume you refer, Mr. Clark, to that section of the complaint which charges the Independent Union with having been fostered, dominated, and so forth, by the respondent?

Mr. Clark: Yes.

Trial Examiner Batten: If I remember it correctly, 2353 it is about 5 and 6.

Mr. Lippman: 9.

Mr. Clark: Paragraph 9?

Trial Examiner Batten: The motion is denied.

Mr. Lamfrom: The Respondent now moves, upon all of the evidence, that the intervening amended petition, or the amended petition on intervention of the International Union of Operating Engineers, Local 311, affiliated with the Wisconsin State Federation of Labor and the American Federation of Labor, be dismissed. There is no competent evidence before the Board to grant the petition.

Trial Examiner Batten: The motion is denied.

Mr. Rissman: I will now renew my motion, if the Examiner please, to amend the complaint of the National Labor Relations Board in such respects as that complaint is changed by all of the testimony introduced.

My previous motion was to amend the complaint, as far as at variance with the testimony.

Trial Examiner Batten: I do not understand the motion that you first made to be the same as the one that you made at the close of the Board's case. You just stated, I think, that you moved to—

Mr. Reporter, will you read the motion as it was made?

(Record read by the reporter.)

Mr. Rissman: I will restate it. I move now to amend 2354 the complaint of National Labor Relations Board to conform with the proof submitted in the entire matter.

Trial Examiner Batten: I assume, while you haven't stated so in your motion, I presume you are making that motion for the purpose of correcting only matters such as dates, or details of that sort, and with no thought in mind that you are amending the issues in the case?

Mr. Rissman: It is not my intention by this motion to add any new issue, or to omit any of the issues stated in the complaint.

Mr. Lamfrom: The Respondent will object to the granting of this motion, on the ground that it is not proper to have a complaint amended in any of its essential allegations to conform with proof, other than as such proof may be indicated by the essential allegations of the complaint, or that such proofs at variance, with the objections which have heretofore been made by the Respondent to the reception of evidence, and overruled by the Examiner.

Trial Examiner Batten: Just to understand your position clearly, Mr. Lamfrom, I understand that you are objecting to the motion also insofar as it goes only to correcting a date, or some detail in the complaint, where the proof discloses that it was other than stated?

Mr. Lamfrom: My objection to the motion goes to this point, and to this extent: That if the proof is at variance 355 with any of the essential allegations in the complaint, other than that of incidents which are related and connected with the allegations of the complaint, such incidents being dates, places or other facts that go to make up the offense, which are not the material facts.

Trial Examiner Batten: Well, the motion will be granted, with the same limitation as was specified in the first instance when it was made, that is, in line with your last statement, Mr. Lamfrom, that it applies only to such incidents as dates or matters of that kind, but not as to the material allegations in the complaint, or the proof presented in connection therewith.

Mr. Lamfrom: I have in mind in that respect something that Carlyle once said, that time and place are not necessary to events, but they are merely conditions under which events happen. That is about where I stand here.

Trial Examiner Batten: Are there any further motions? (No response.)

Trial Examiner Batten: If not, the record is closed.

(Whereupon, at 6:20 o'clock p. m., Wednesday, August 25, 1937, the hearing in the above-entitled matter was closed.)

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BOARD EXHIBIT NO. 17.

April 21, 1937:

To All Employees:

On May 25th, 1934, the President of the United States said, "The Government makes clear that it favors no particular union or particular form of employe organization or representation. The Government's only duty is to secure absolute and uninfluenced freedom of choice without coercion, restrain, or intimidation from any source."

The above is the policy of this company.

(1) This means all employes have a right To Join, or Not To Join, Any lawfully organized group of employes.

(2) Any statement made to you by anyone that you must pay dues to any organization to work here is Not True.

The Falk Corporation.

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BOARD EXHIBIT NO. 18.

April 16, 1937.

To Our Employes in the Power House:

You have probably received a post-card from the organizer of the union stating that Mr. Kingsland had a satisfactory interview with me. The inference is that we are favorable inclined toward signing an agreement.

I wish to make our position perfectly clear to you—

(1) We are not in favor of a union.

(2) We will not agree to recognize Mr. Kingsland as bar-

aining agent for, you unless you as a group signify your de-
re to have us do so.

(3) We are ready at all times to meet with you as a group
individually to discuss your problems.

Yours very truly,

The Falk Corporation.

Harold S. Falk

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BOARD EXHIBIT NO. 19.

(Milwaukee)	(U. S. Postal Card)
(Apr 15)	(Cancelled)
(2 AM)	(1 One Cent 1)
(1937)	(Jefferson)
(Wis.)	

(This Side of Card Is for Address)

Mr. Mike Trebitosky
3809 W. Michigan Street
Milwaukee
Wisconsin

U. of O. E.

Local No. 311

Dear Sir:

Mr. Kingsland, our business representative, recently called
on Mr. Harold Falk, and the outcome of his visit was very
favorable. Only the hours that you men wish to work remains
to be settled. Other minor conditions that you wish inserted
in the contract will be discussed at a meeting to be held
Sunday morning, April 18, 10 o'clock at our office.

Faternally yours,

P. A. Santner,

Organizer.

AS:CR

01

BOARD EXHIBIT NO. 21.

(Letterhead of The Falk Corporation, Milwaukee.)

o:
Messrs. Fred Wilson
Joseph Trost
Carl Menz

April
Twenty-third
1937

After conferences with your Committee, and upon your
statement that your organization represents the majority of
our employes and that you request that we enter into nego-
tiations with you as the collective bargaining agency for all

of our employes, we advise you that we will so recognize your organization:

The Falk Corporation,
Herman W. Falk,
Herman W. Falk,
President.

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BOARD EXHIBIT NO. 22.

Milwaukee, Wis. April 20th 1937

To:

Falk Corp.,
Milwaukee, Wis.

Gentlemen:

Please be advised that Articles of Incorporation of the Independent Union of Falk Employees were filed with the Secretary of State at Madison on Monday April 19th and with the Register of Deeds on the 20th day of April and we are assured that the charter will be issued on Wednesday April 21st.

The members of this corporation will be the employees of your company, not including officers, executives, assistant officers, assistant executives, superintendents, assistant superintendents, foremen or assistant foremen.

The business and purpose of the corporation includes the right to act as the representative of its members in entering into contracts with you, as their employer, for the purpose of collective bargaining.

The undersigned were the organizers of this corporation.

The first meeting of its members will be held shortly, at which time a Board of Directors and officers will be elected.

We are attaching hereto a copy of the application being signed by the members.

We are informed that approximately 400 employees of your company have signed applications to date and we have good reason to believe that a majority of the employees eligible for membership, will become members of this organization.*

We respectfully request that you fix a time and place where the undersigned may meet with you to discuss the question of collective bargaining on behalf of the members of the Independent Union of Falk Employees.

Yours very truly,

Carl Menz,
Joseph H. Trost,
Fred S. Wilson,

Organizers.

BOARD EXHIBIT NO. 27.

By-Laws.

Article I.

Meetings of Members.

1. The annual meeting of the members of this corporation shall be held at such place in the City of Milwaukee, State of Wisconsin, as the Board of Directors may determine; said meeting shall be held at 1:30 o'clock, in the afternoon, on the first Sunday in May, beginning with the year 1938, at which time there shall be elected by the members of said corporation, a Board of thirteen (13) Directors, for the ensuing year, and the members shall transact such other business as shall properly come before them.
2. A majority in number of the members of the corporation shall constitute a quorum for the transaction of business.
3. A notice specifying the time and place of such annual meeting of the members of said corporation shall be given by the Secretary, in such manner as may be provided by the Board of Directors, but in such a way that each member of the corporation will have at least three (3) days' notice of the time and place fixed for said annual meeting.
4. If a quorum be not present at the annual meeting, the members present may adjourn to such future time as may be agreed upon by them. A notice of such adjourned meeting shall be given in the same manner, as provided for herein for the holding of said annual meeting.
5. If a quorum is present, the said meeting may be adjourned from day to day, and no notice of such adjournment need be given.
6. A special meeting of the members of said corporation may be called at any time by the President, or by seven (7) members of the Board of Directors, provided at least two (2) days' notice be given to the members thereof, such notice to be given as required for the annual meeting of said corporation. Regular monthly meetings of the members will be held on the first Saturday in each month at the hour of 2:30 P. M.

Article II.

Meetings of Directors.

Regular meetings of the Board of Directors of the said corporation shall be held at 3:00 o'clock P. M., on the first

Saturday of each month, at such place as may be designated by the President. Special meetings of said Board of Directors may be called by the President or by seven (7) Directors, by giving twenty-four (24) hours' notice to each Director; said notice may be given verbally, or in writing. Said meetings shall be held at the hour and place to be specified in advance by the President of the Board of Directors.

2. Meetings of the Board of Directors may be held at any time or place where all of the Directors are present and consent to the holding of such meeting.

3. A majority of the Directors shall constitute a quorum.

4. The Directors shall have the general power of governing the said corporation, including the right to elect a President, a Vice-President, a Treasurer and a Secretary of said corporation. The officers shall be selected from the Board of Directors.

5. The Directors shall exercise all the powers that may be exercised, or performed, under the Articles of Incorporation, and By-Laws of said corporation.

6. The order of business at all meetings of the Board of Directors shall be as follows:

- (a) Roll call.
- (b) Reading of the Minutes of the preceding Meeting, and action thereon.
- (c) Reports of Officers.
- (d) Reports of Committees.
- (e) Unfinished Business.
- (f) Miscellaneous business.
- (g) New business.

Article III.

Officers.

1. The officers of this corporation shall consist of a President, a Vice-President, a Secretary and a Treasurer. The duties of any of the general officers of the corporation, other than President and Vice-President may be combined.

2. The President shall preside at all meetings of the Board of Directors, and at all meetings of said corporation, and shall have general supervision over the affairs of said corporation, subject to the action of the Board of Directors.

3. The Vice-President shall perform such duties as may be assigned to him by the Board of Directors. In case of death, disability or absence of the President, he shall perform and be vested with all the duties and powers of the President.

4. The Secretary shall keep a record of the minutes of the proceedings of the meetings of the Directors, and members of the corporation, and shall be responsible for the giving of notice, as required by these By-Laws, of all meetings required herein, and shall keep a full and complete list of all members of the corporation. He shall have the custody of all 196 books, records and papers of the corporation, except such as shall be in charge of the Treasurer; or of some other person authorized to have such custody and possession, by resolution of the Board of Directors.

5. The Treasurer shall keep an account of all moneys of the said corporation, received or disbursed, and shall deposit all moneys in the name of and to the credit of the said corporation, at such banks and depositaries, as the Board of Directors shall designate. All checks for the payment of money shall be signed by the Treasurer, and countersigned by the President, or Vice-President. The Treasurer shall furnish a bond, in such sum as may be designated by the Board of Directors, in a Bonding Company to be approved by the Board of Directors, and the premium for said bond is to be paid for out of the funds of the corporation.

Article IV.

Vacancies.

In case of death, disability, resignation, or otherwise, of one or more of the officers, or directors, the remaining directors, although less than a quorum, shall fill the vacancies for the unexpired term.

It is contemplated that the Directors will be selected from the various departments of the employer. Before a vacancy in the Board is filled, the remaining Directors will consult with the members of the department where the retiring Director was employed and obtain the suggestions from those members, as to who shall be appointed to fill said vacancy.

Article V.

Compensations.

1. No officer or member of any Committee shall receive any compensation for his or her services, except as hereinafter provided.

2. Compensation for all officers. Compensation for all officers shall be fixed from time to time, by resolution of the Board of Directors.

3. No officer, excepting the Secretary, shall receive any salary. However, the Directors may be compensated for time actually lost from employment in performing their duties as members of the Board.

Article VI.

Dues.

The amount payable, as membership dues, shall be fixed from time to time, by resolution of the Board of Directors, but in no event shall the dues exceed Fifty Cents (\$.50) per month per member.

397 Every member of said corporation shall be subject to the payment of dues from and after his or her application for membership is accepted in said corporation.

Article VII.

Certificate.

The corporation shall cause to be issued to each member, a certificate in substantially the following form:

"Independent Union of Falk Employees.

Official Membership Card.

Certificate No.

Date

This is to certify that

Clock No., residing at number
is a member of the Independent Union of Falk Employees,
a Wisconsin corporation, in good standing at the date hereof,
and is entitled to all the benefits and privileges of said corporation.

(Corporate Seal)
Countersigned by:

.....
President.

.....
Secretary."

The certificates so issued shall be numbered consecutively and shall be signed by the President, or Vice-President, and countersigned by the Secretary, or Assistant Secretary, and shall have affixed thereto the corporate seal, the name of the member, his number, his place of residence and the date of issuance.

The Secretary shall keep an exact record of all said certificates so issued and a record of the cancellation of said certificates, if any such are cancelled.

Article VIII.

Suspension.

Any member may be suspended from membership in said corporation for misconduct, or neglect of duties, and obligations prescribed by the By-Laws of the corporation; also for non-payment of the dues for four (4) months, and non-appearance at six (6) successive regular meetings of the members of said corporation.

3974

Article IX.

Amendment.

By-Laws may be adopted, amended or repealed at any annual meeting of its members, or at a special meeting of its members called for that purpose by the vote of a majority of the members.

408 :

BOARD EXHIBIT NO. 32.

Application

I hereby apply for membership in corporation or association to be organized by the employees, not including executives, assistant executives, officers, assistant officers, superintendents, assistant superintendents, foremen or assistant foremen of Falk Corp. of Milwaukee.

The purpose of said organization shall be to aid its members in the regulation of wages, hours, conditions of employment, including the right to act as the representative of its members in entering into contracts with their employer for the purpose of collective bargaining.

If said proposed organization is formed and I am accepted as a member, I agree to be bound by the Articles of organization and By-Laws.

I further agree to submit to the Board of Directors of said organization, any dispute between myself and my employer, pertaining to wages, hours, working conditions, or other mutual aid or protection and to abide by the decision of said Board.

I expressly nominate and appoint the Board of Directors of said organization to be selected, as my representative for the purpose of collective bargaining.

If I am accepted as a member in said organization, I agree

not to withdraw without giving at least ten (10) days' written notice.

In the event I am accepted as a member and withdraw I agree to forfeit my rights as a member unless otherwise ordered by the Board.

Clock No.	Name	Address	Date
-----------	------	---------	------

410

BOARD EXHIBIT NO. 34.

Milwaukee, Wisconsin,
May 4, 1937.

Milwaukee Operating Engineers, Local No. 311,
American Federation of Labor,
2401 West Wisconsin Avenue,
Milwaukee, Wisconsin.

Gentlemen:

The undersigned employe of The Falk Corporation hereby withdraws the application signed by him for membership in the Milwaukee Operating Engineers, Local No. 311, and asks that the fee paid by him be returned.

Very truly yours,

Lawrence G. Frank.

Address 1238 S 25th St.

412

BOARD EXHIBIT NO. 36.

The following men are members of Local Union No. 311:

Mr. L. Frank February 27, 1937.

Mr. J. Yunkovich February 27, 1937.

Mr. Wm. Brandt February 27, 1937.

Mr. G. Achterberg March 5, 1937.

Mr. A. Ottman March 9, 1937.

Mr. M. Nessman March 13, 1937.

Mr. C. Schnader March 15, 1937.

Mr. M. P. Gaherty March 21, 1937.

Mr. C. Hergenroeder March 21, 1937.

Mr. J. McCarthy March 26, 1937.

Mr. Chas. Chase March 26, 1937.

Mr. M. Trebiloski March 26, 1937.

Mr. J. A. Jensen March 31, 1937.

Mr. Wm. Sivright June 15, 1935.

414

BOARD EXHIBIT NO. 38.

Milwaukee, Wis.

April 27th 1937

Mr. Fred Douglas,
R. 5, Box 390
West Allis, Wis.

Dear Sir:

Will you please get in touch with Mr. Harold Falk by
phone or personally at your earliest opportunity and oblige,

Yours very truly,

Bernard Moebus

*Secretary, Independent Union
of Falk Employees.*

Notice!

A meeting of the employees, not including superintendents, assistant superintendents, foremen or assistant foremen, of the Falk Corp. will be held on Sunday afternoon, April 18th, 1937, at 1:30 o'clock at 3116 West North Avenue, Milwaukee, Wisconsin, to consider the question of organizing for the purpose of collective bargaining.

Bring Employee's Pass.

All employees are invited to attend.

NATIONAL LABOR RELATIONS BOARD

At the request of the Committee.
SE NO. X/11-284 BOARD PETITIONER
THE MATTER OF the EXHIBIT NO. 3
TE 8/18/37 WITNESS Seigel
ETHEL E. FISHER, OFFICIAL REPORTER
BY men



Respondent's Exhibit No. 6

THE FALK CORPORATION

PLANT COMMUNICATION

DATE

The Shop Council regular meeting was held on Thursday April 8 1937 and asked for permission of W. H. Hale whether we could arrange to have a meeting with the representatives of the Council and it was granted. Therefore I as chairman of the Council told Mr. Hydar to notify all representatives that a meeting would take place on Mon April 12 at 1:30 P.M. On the date of this meeting I asked Mr. Hydar whether he notified all members it slipped his mind but got busy and telephoned to who he could get. At that meeting I was chosen as Chairman and I read a letter which I myself had written and read same to the members that were present. The letter read as part of the Council minutes and council men as you all know by now there is a bill pending in the legislature at Madison which is the so called The Small Wagner Labor relations bill. We today are facing a serious problem more than some of us think about due to the fact that Shop Council will be abolished if enacted in law and it is up to us older employees of Falk Corp. to work for peace & harmony and create our own union which is according to my opinion legal whether the Wagner Labor act.

SIGNED

VERBAL INSTRUCTION NOT ACCEPTED

PLANT COMMUNICATION

Form 31-1 100 50

DATE

Due to a lengthy discussion at this meeting I as chairman appointed a member by the name of Frank Rolash to notify Mr. A. G. Alder of attending the meeting. As Mr. Rolash entered the meeting I asked him to take the floor and give up some information regarding the Ohio State Labor Act. And he informed the members that were present that he did not understand the bill thoroughly but said this that we could choose any organization which we may want to join or have a union of our own according to said bill. The meeting adjourned and I had to leave the plant at 2:30 P.M. due to illness on Mon April 12 and returned back to work on Wed April 21. In the meantime Mr. John Wolf who was chosen a temporary chairman.

SIGNED

VERBAL INSTRUCTION NOT ACCEPTED

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RESPONDENT'S EXHIBIT NO. 8.

Foremen & Asst. Foremen on hourly wage payroll as of
4/23/37—5/5/37—6/15/37.

Clock#	Name	
2032	Frank Strehlow	Scrap Yard
2052	Geo. Grudichak	Scrap Yard—Night
2202	Eugene Schowalter	Core
2301	Jos. Dohse	Core
2404	Mark Peranich	Cleaning Room
2402	Joe Gagliano	Cleaning Room
2405	Walter Berry	Cleaning Room
24200	Pietro Tarcivia	Cleaning Room—Night
2501	J. E. McCarville	Small Molding
2502	Frank Neal	Small Cleaning Room
2801	Phil Nowak	Pattern Storage
2903	A. J. Andorfer	Gen. Foundry
2910	Art. W. Cain	Foundry—Night
2911	Walter Maloy	Foundry—Night
30118	Chas. Klotz	Fdry Flasks
3102	Wm. Schmidt	Small Molding—Appr. Instructor
3103	Martin Wald	Small Molding Foreman
5006	Robert Whitehead	Mach. Shop
5007	Chas. Wolter	Mach. Shop
5008	C. B. Seal	Mach. Shop
5010	Leslie Rock	Mach. Shop
5011	Henry Hilse	Mach. Shop
5012	W. Bartels	Mach. Shop
5013	M. Krolikowski	Mach. Shop
5015	Theo. Metzfeld	Mach. Shop
5016	Fred Raffel	Mach. Shop
5017	Geo. Thompson	Mach. Shop
5018	Law. Detchars	Mach. Shop
5020	J. C. Gebhardt	Mach. Shop Chief Inspector
50103	Joe Hahl	Mach. Shop
50173	Frank Proft	Mach. Shop
50405	H. J. Marshal	Mach. Shop Died 5/10/37
50404	A. Henderson	Mach. Shop Since 5/11/37
50254	Pat. McAndrew	
50562	Pat Feely	Mach. Shop
428 50654	Frank Denomic	Mach. Shop (Hitcher crew)
6002	Frank Gauer	Pattern Shop
6201	John Grutza	Brass Fdy.
6401	Geo. Rebotzki	Flash Shop
6707	Bernhard A. Koch	Welding
6708	H. Hedberg	Welding
6710	Ainslie D. McMillan	Welding

6800 George Given Heat Treat
 7002 Ed. Meyer Power House
 7201 John Mitchell Electrical Maintenance
 7202 Ferd. Schmalzer Electrical Maintenance
 7304 Frank Holub Mechanical Maintenance
 7401 J. Wiczorek Carpenter
 7424 Herman Knauer Painter
 7435 Ferry Zweck Tinshop
 7601 Geo. Zunker Yard
 7602 John Kempski
 7647 Max Haimerl Watchman
 7701 Louis Gronczewski Stores

These men are all included in the list of manufacturing divisions submitted in my testimony of Aug. 24, 1937.

The Falk Corporation
 Jos. B. Cibulka

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RESPONDENT'S EXHIBIT NO. 9.

Aug. 24, 1937.

Ex-Works Council Members who attended the meeting held on April 8, 1937.

Clock #	Name
50276	Don Feilbach
50304	Dan Martin
5024	R. Loitfellner
50632	Frank (Brandt) Wutschek
6729	Wm. Stickman
2433	G. Kassin
2226	Herm. Schneider
3151	M. Gagliano
6003	Elmer Kothrade

No deduction was made from the pay of these men for the time spent at this meeting.

The Falk Corporation
 Jos. B. Cibulka

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RESPONDENT'S EXHIBIT NO. 12.

June 24, 1937.

Neither the National Labor Relations Act, Known As the Wagner Act, Nor the Wisconsin Labor Relations Act Requires the Employer to Permit the Collection of Dues For Any Union On Company Premises. We Wish to Announce That We Are Not Agreeable to the Collection of Such Dues For Any Organization On Company Premises.

The Falk Corporation.

NOTICE!

to the Employees of the Falk Corporation -

Some of the employees have organized the Independent Union of Falk Employees, a Wisconsin corporation. A great many applications for membership have been signed. All employees, not including officers, executives, assistant officers, assistant executives, superintendents, assistant superintendents, foremen or assistant foremen, may become members.

A meeting of the organizers and applicants for membership will be held on Saturday, April 24th 1937 at 2:00 P. M. at 3116 West North Ave. for the purpose of completing the organization, electing directors and officers and to discuss things that the employees feel should be taken up with our employer.

All who have signed applications and those intending to do so should attend this meeting.

453 INDEPENDENT UNION EXHIBIT NO. 2-A.

Articles of Incorporation

These Articles of Agreement and Incorporation, made and entered into this 19th day of April, A. D. 1937, by and between the persons whose names are hereunder subscribed.

Witnesseth: That we, the undersigned, do hereby mutually agree each with the other and do make the following declarations, to-wit:

1. That we, and each of us, are adult residents of the City of Milwaukee, County of Milwaukee, and State of Wisconsin.

2. That we associate together for the purpose of forming a corporation under the Wisconsin Statutes.

3. That the business and purpose of said corporation shall be to aid its members in becoming more skillful and efficient workers; the promotion of their general intelligence; the elevation of their character; the regulation of their wages, their hours, and conditions of employment; the protection of their individual and collective rights in the prosecution of their employment; the raising of funds for the benefit of sick, disabled or unemployed members, or the families of deceased members; and for such other lawful object, or objects, for which working people may combine, having in mind the mutual aid and protection of its members, and including the right to act as the representative of its members in entering into contracts with their employer, for the purpose of collective bargaining.

4. The name of said corporation shall be Independent
454 Union of Falk Employees, and its location shall be in the City of Milwaukee, County of Milwaukee, State of Wisconsin.

5. The corporation shall be Non-stock and no dividends or pecuniary profits shall be declared to the members thereof.

6. The several general officers of the corporation shall be, a President, a Vice-president, a Secretary and a Treasurer, and a Board of Directors, consisting of thirteen (13) members.

The duties of any of the general officers of the corporation, other than President and Vice-President, may be combined.

All of the said officers shall be elected for a period of one (1) year, or until their successors have been elected and qualified.

The officers shall be elected by the directors, who shall first be elected by members of the corporation.

7. The President shall preside at all meetings of the Board of Directors; call all meetings of the corporation as provided herein; call special meetings of the Board of Directors, upon the giving of the proper notice, and shall perform such other duties, as are ordinarily performed by a President, and shall act as Chairman of the Board of Directors.

The Vice-President, in the absence of the President, shall perform all duties, and shall have all the powers hereinabove specified to be exercised, or performed, by the President.

The Secretary shall attend all meetings of the Board of Directors, and keep an accurate record of all meetings and proceedings thereof. The Secretary shall attend all meetings of the corporation, act as Secretary thereof, and keep accurate minutes thereof, and shall keep a full and complete list of the names and addresses of the members of the corporation.

The Treasurer shall receive all dues for membership in the corporation; shall issue proper receipts therefor; shall keep accurate books of account of all dues, and other moneys received by him, as such Treasurer, and of all disbursements made, and shall, as such Treasurer, be responsible for all dues and other moneys received by him, and be required to give a surety bond for the faithful performance of his duties, as Treasurer, the said bond to be in a sum fixed by the Board of Directors. The Treasurer shall be authorized to sign checks for disbursements, only upon the direction of the Board of Directors, which said checks shall be countersigned by the President of said Board of Directors.

The Treasurer shall deposit all funds of the corporation, except such sums as shall be directed to be invested in such interest-bearing securities, as the Board of Directors may select, in a depository to be designated by the Board of Directors.

Any sum or sums invested by order of the Board of Directors shall be held in the name of, and as the property of the corporation.

8. The Board of Directors shall act as a supreme governing body of the corporation, and shall have the right to hear and determine any claim, or claims, made by members of the corporation against other members of the corporation, and to hear and determine the complaints and grievances made by and between members of the corporation, and hear the com-

456 complaints and grievances made by any member of the corporation against Falk Corp. arising out of conditions of employment and the regulation of wages or hours, and the Board of Directors shall upon finding of a majority of its members, that any claim, complaint or grievance to conditions of employment, or the regulation of wages or hours, is justified, present, on behalf of the corporation, and the complaining member, such claim, complaint or grievance, to the management of the Falk Corp. In presenting said claims to the employer, the Board of Directors shall act as the representative of each member of the corporation.

The Board of Directors shall meet at 7:30 P. M. on the first Thursday of each month, at such place as may be designated by the President.

Said Board of Directors shall be authorized to hold special meetings upon the request of the President of said corporation, upon the giving of 24 hours' notice.

Said Board of Directors shall have the right to classify all members of said corporation, so as to enable them to negotiate with said employer as to the nature of employment, the regulation of hours, the wage scale, or 'piecework' scale to apply to any such member as so classified.

The Board of Directors shall have the sole right to act as the representatives of the members of the corporation in all negotiations with the Falk Corp. for the purpose of collective bargaining, affecting conditions of employment, regulation of wages or hours, or other mutual aid or protection.

9. The corporation shall be composed of employees of the Falk Corp. of Milwaukee, Wisconsin, not including officers, executives, assistant officers, assistant executives, superintendents, assistant superintendents, foremen, or assistant 457 foremen; each member shall be entitled to all rights, privileges and benefits of the corporation during the time said member is employed by the Falk Corp. and remains in good standing in the corporation.

Any person making application for membership to the corporation, shall sign a written application; said application shall be acted upon by the Board of Directors within four (4) days after receiving said application; the Board may accept or reject any application.

Any applicant, whose application is rejected by the Board may resubmit his application to the members of the corporation, at any meeting of the corporation. In the event that two-thirds (2/3) of the members present at said meeting vote in

favor of accepting said application, said applicant shall be admitted to membership.

The members of said corporation shall pay an initiation fee and a monthly fee in such an amount as may be determined by the Board of Directors.

The members may be discharged or expelled for misconduct or neglect of duties and obligations prescribed by the By-laws of the corporation, also for non-payment of the fees and assessments for four (4) months and non-appearance at six (6) successive regular meetings and engagements of the members of the corporation.

10. The corporation shall hold its first meeting for the election of officers on the 25th day of April 1937 at 1:30 P. M. at number 3116 West North Avenue, in the City of Milwaukee, County of Milwaukee, State of Wisconsin.

11. These Articles of Incorporation may be amended by resolution, setting forth such amendment or amendments adopted at any meeting of the members by a vote of at least one-half (1/2) of all of the members of the corporation.

12. The seal of the corporation shall be circular, about two inches in diameter, with the name of the corporation engraved around the margin and Corporate Seal engraved across the center. It shall remain in the custody of the Secretary and shall be affixed to all certificates of membership, and to all other instruments requiring a seal. If deemed advisable by the Board of Directors, a duplicate seal may be kept and used by any other officer of the corporation.

In Witness Whereof, we, the persons who make the above and foregoing Articles of Agreement, have hereunto subscribed our names and affixed our seals respectively, the day and year first above written.

In the presence of
Adelheid Nack,
Giles F. Clark.

Carl Menz, (Seal)
Joseph H. Trost, (Seal)
Fred C. Wilson, (Seal)

459 State of Wisconsin, }
Milwaukee County. } ss.

Be it remembered that on the 19th day of April A. D. 1937 personally appeared before me the above named, Carl Menz, Joseph H. Trost and Fred C. Wilson, to me personally known to be the persons who made, signed and executed the above and foregoing Articles and acknowledged the same.

(Seal) Giles F. Clark,
Notary Public, Milwaukee County,
Wisconsin.

My commission expires April 6, 1941.

460 State of Wisconsin, }
Milwaukee County. } ss.

Carl Menz, Joseph H. Trost and Fred C. Wilson, being each for himself first duly sworn, on oath says; that he is one of the signers of the original Articles of Incorporation of Independent Union of Falk Employees, a copy of which Articles are hereto attached; that said attached copy is a true and correct copy of the original Articles of said incorporation, and the whole thereof.

Carl Menz,
Joseph H. Trost,
Fred C. Wilson.

Subscribed and sworn to before me this 19 day of April, A. D. 1937.

(Seal) Giles F. Clark,
Notary Public, Milwaukee County,
Wisconsin.

My commission expires April 6, 1941.

EXHIBIT NO. 2-B.

Minutes of the first meeting of the incorporators of Independent Union of Falk Employees, held at 3116 West North Ave. in the City of Milwaukee, on the 24th day of April, 1937 at the hour of 2 o'clock P. M. pursuant to the following waiver of notice and consent to the holding of said meeting, signed by all of the incorporators of this corporation:

We, the undersigned, being all of the incorporators of the Independent Union of Falk Employees, do hereby severally waive notice of the time, place and purpose of the first meeting of all of the incorporators of said company and do hereby call said meeting and consent to the holding thereof at number 3116 West North Ave. in the City of Milwaukee, Wisconsin on the 24th day of April 1937 at the hour of 2 o'clock P. M. of said day; and we do hereby severally consent to the transaction of any and all business that may come before said meeting, including the perfecting of the organization of said corporation, the consideration of applications for membership, the adopting of a code of By-Laws and the electing of a Board of Directors.

Dated this 24th day of April A. D. 1937.

Carl Menz
Joseph H. Trost
Fred C. Wilson

The meeting was called to order by Joseph H. Trost, one of the organizers of said corporation.

Thereupon, said meeting proceeded to organize and upon motion duly made, seconded and unanimously carried, Albert W. Prodoehl was elected Chairman of said meeting and thereafter acted as such.

Thereupon, on motion duly made, seconded and unanimously carried, Victoria E. Worke was elected Secretary of said meeting and thereafter acted as such.

Thereupon, the applications for membership to this corporation were presented to the meeting and they totalled 693 in number.

Thereupon, upon motion duly made, seconded and unanimously carried, all of said applications for membership were

accepted, subject to the approval of the Board of Directors, to be elected and as provided for by the Articles of Incorporation of this company.

The Secretary thereupon reported that the applications so acted upon totalled 693 in number.

Thereupon, the incorporators reported that they had caused to be prepared and filed in the office of the Secretary of State a verified copy of the Articles of Incorporation of this corporation, and they had paid the required filing fee to said Secretary of State and had caused to be filed in the office of the Register of Deeds of Milwaukee County, State of Wisconsin, a copy of said Articles, duly certified by the Secretary of State, and had received from said Secretary of State the Certificate of Incorporation.

462 After a full examination of said Articles and said Certificate of Incorporation, upon motion duly made and seconded, the following resolution was unanimously adopted and ordered spread at length upon the records of this meeting.

Resolution

"Be It Resolved: That the Articles of Organization of this company and the Certificate of Incorporation, be and the same are hereby approved and ordered made a part of the records of this corporation and that all action taken by said incorporators in connection therewith, be, and the same is hereby ratified, approved and confirmed; and

Be It Further Resolved: That this corporation shall pay any and all legal and other expenses incurred in connection with its incorporation and its organization; the amount thereof to be subject to the approval of the Board of Directors."

Thereupon, the meeting proceeded to consider By-Laws and after a thorough consideration of the By-Laws and a full and complete discussion thereof, and all of those present being fully conversant therewith, the following By-Laws, on motion, duly made and seconded were adopted as and for the By-Laws of this corporation, to-wit:

(By-Laws)

Thereupon, the members proceeded to the election of a Board of Directors, and the following were duly elected Direc-

tors to hold office until the next annual meeting or until their successors were elected and qualified:

Albert W. Prodoehl
Fred C. Wilson
William G. Ewart
Louis J. Kubricky
Frank J. Van Den Heuvel
William Stichmann
Frank Ruscitti
John F. Mitschka
Joseph H. Trost
W. M. Ladwig
Stanley J. Adamski
Bernard Moebus
Dan Martin

There being no further business the meeting was adjourned.

Albert W. Prodoehl
Chairman of said Meeting.

Attest:

Victoria E. Worke
Secretary of said Meeting.

463 Minutes of The First Meeting of The Board of Directors.

Minutes of the first meeting of the Board of Directors of Independent Union of Falk Employees, held at 3116 West North Ave., on the 24th day of April A. D. 1937 immediately following the first meeting of the organizers and members, pursuant to the following waiver of notice and consent to the holding of said meeting signed by all of the Directors of this corporation on the records of said meeting, to-wit:

We, the undersigned, being all the Directors of the Independent Union of Falk Employees elected to said Board at the first meeting of the incorporators and members of said corporation, held this day, do hereby severally waive notice of the time, place and purpose of the first meeting of said Board of Directors and do hereby call said meeting and consent to the holding thereof at this time and place, to-wit: number 3116 West North Ave. in the City of Milwaukee on the 24th day of April, 1937, immediately following the adjournment of the said first meeting of the organizers and members of said corporation and we do hereby severally con-

sent to the transaction of any and all business that may come before said meeting.

Albert W. Prodoehl
Fred C. Wilson
William J. Ewart
Louis J. Kubricky
Frank J. Van Den Heuvel
William Stichmann
Frank Ruscitti
John F. Mitschka
Joseph H. Trost
W. M. Ludwig
Stanley J. Adamski
Bernard Moebus
Dan Martin

The meeting was called to order by Albert W. Prodoehl, one of the Directors.

Thereupon, on motion duly made, seconded and unanimously carried, Albert W. Prodoehl was elected temporary Chairman of the meeting, and thereafter acted as such.

Thereupon, on motion duly made, seconded and unanimously carried, Fred C. Wilson was elected temporary secretary of the meeting and thereafter acted as such.

Thereupon, the Directors proceeded to the election of 464 officers; and on motion duly made and seconded, the following resolution was unanimously adopted:

"Be It Resolved: That Fred C. Wilson be, and he is hereby, chosen President of this corporation; that Albert W. Prodoehl be, and he is hereby, chosen Vice-President of this corporation; that Bernard Moebus be, and he is hereby chosen Secretary of this corporation; that Stanley J. Adamski be, and he is hereby, chosen Treasurer of this corporation."

Thereupon, the said Fred C. Wilson and said Bernard Moebus, respectively, began the discharge of their duties as such respective officers and thereafter acted as permanent Chairman and permanent Secretary of the meeting.

Thereupon, at the direction of the President, the Secretary read the minutes of the first meeting of the members of this corporation held upon this day and the code of By-Laws adopted at said meeting; and, after a full and complete discussion of said minutes, and said By-Laws, and of all action taken at said meeting, the following resolution was duly made, seconded and unanimously adopted:

"Be It Resolved: That all action taken by the members of this corporation at their first meeting, including the adoption of By-Laws, and the By-Laws so adopted by them be, and the same are hereby, ratified, approved and confirmed.

"Be It Further Resolved: That all resolutions adopted and all motions carried at said meeting and the By-Laws adopted at said meeting be, and the same are hereby, re-enacted and adopted by this Board of Directors, with the same force and effect as though herein set forth at length and made a part thereof."

Thereupon, the following resolution was duly made, seconded and unanimously adopted:

"Be It Resolved: That this corporation does hereby accept the applications to membership of this corporation as the same appear from the written applications submitted at the meeting of its members this day held, excepting the application of Ernest Dearth held for further consideration.

Be It Further Resolved: That said written applications for membership be forthwith filed with the Secretary and said Secretary is hereby authorized and directed to make a permanent record of said written applications for membership in this record book, by writing therein the name, address and clock number of each applicant."

Thereupon, on motion duly made, and seconded, the following resolution was unanimously adopted:

"Be It Resolved: That until it shall by resolution otherwise determine, the Board of Directors of this corporation shall hold regular meetings thereof at such place as the President made determine, on the first Saturday of each month hereafter, at the hour of 3:00 o'clock, P. M."

465 Thereupon, on motion duly made, and seconded, the following resolution was unanimously adopted:

"Be It Resolved: That the Mitchell Street State Bank, of the City of Milwaukee, State of Wisconsin be, and it is hereby, selected and designated as the depository of and for the moneys and funds of this corporation; that all of the moneys and all of the funds of this corporation shall hereafter be deposited in and with said Bank and that such moneys and funds may be withdrawn only upon checks, orders and drafts signed by the Treasurer and countersigned by the President or Vice-President of this corporation."

Thereupon, on motion duly made, and seconded, the following resolution was unanimously adopted:

"Be It Resolved: That the Certificate of Membership shall

be in form substantially as that set forth in the minutes of the first meeting of the organizers and members this day held."

Thereupon, on motion duly made, and seconded, the following resolution was unanimously adopted:

"Be It Resolved: That the Secretary shall at once procure for the corporation a sufficient number of certificates referred to in the preceding resolution and a corporate seal for this corporation, which seal shall have inscribed thereon the name of this corporation and the words 'Corporate Seal' and 'Independent Union of Falk Employees'; and that such seal shall be, and the same is hereby adopted as and for the corporate seal of this corporation, and that for the purpose of identification, the said Secretary is hereby directed to impress said seal upon the page of the record where this resolution appears."

(Seal)

Thereupon, on motion duly made, and seconded, the following resolution was unanimously adopted:

"Be It Resolved: That the amount payable by each member of this corporation, as dues, is hereby fixed and determined in the sum of Fifty Cents (\$.50) per month, payable in advance, the first payment to be made on or before the first day of May 1937 and the said payment shall constitute the dues for the month of May, 1937. Thereafter the dues to be paid on the first day of each month, in advance."

Thereupon, on motion duly made, and seconded, the following resolution was unanimously adopted:

"Be It Resolved: That the Board of Directors of this corporation, be and they are hereby authorized to notify the Falk Corp. of the organization of this corporation and request that said Board be recognized as the representative of all of the members of this corporation for the purpose of collective bargaining, and that the President and Secretary of this corporation, be and they are hereby, authorized to list the name of this corporation with the Wisconsin Labor Relations Board, as provided by law."

466 Thereupon, on motion duly made, and seconded, the following resolution was unanimously adopted:

"Be It Resolved: That the position of Assistant Secretary of this corporation be, and the same is hereby, created; said Assistant Secretary to have the usual powers and perform the usual duties of an Assistant Secretary.

Be It Further Resolved: That Miss Victoria E. Worke, be, and she is hereby, elected Assistant Secretary, to hold office until the next annual meeting or until her successor is elected and qualified.

Be It Further Resolved: That the Board of Directors as representatives of the members of this corporation, meet with the management of Falk Corp. on Monday afternoon, April 26th 1937 at 4 o'clock P. M. for the purpose of discussing increase in wages, working conditions and other matters.

Be It Further Resolved: That the President and Secretary of this corporation, cause this corporation to be listed as a labor organization with the Wisconsin Labor Relations Board.

Be It Further Resolved: That this meeting is adjourned until Saturday, May 1st, 1937 at the hour of 3 o'clock, P. M.

There being no further business the meeting adjourned.

Fred C. Wilson
President.

Attest:

Bernard Moebus
Secretary.

467 The first meeting of the Independent Union of the Falk Employees was called to order at 2:30 P. M. on Saturday, April 24th, 1937 at the North Avenue Auditorium.

Mr. Albert Prödehl presided as temporary Chairman. Miss Victoria Worke as temporary secretary. Mr. Fred Wilson, Mr. Joe Trost, and Mr. Carl Minz, signors of the application, acted as committee men.

A motion was made and seconded to accept the six hundred and ninety three applications of the Independent Union. The vote was unanimous.

The By-Laws were read by the temporary chairman and amendments and discussion were given after each paragraph.

It was resolved that the first Saturday in the month, at the hour of 2:30 P. M. be held monthly. A motion was made that the directors hold their meetings after the monthly meetings of the members. The vote was unanimously carried.

Mr. Burke, the attorney, explained that the president of the Union must be from the Board of Directors. It is the duty of the members to see that they select the directors who are to do their collective bargainings. The directors in turn select the officers of the Union, such as the President, Vice-President, Secretary, Assistant Secretary, and treasurer.

Article VI referred to the fees of the Union. It was resolved that fifty cents (50c) be the maximum rate for each month. A suggestion was made that the dues be taken out of the checks; majority of members felt that the Union would

lose the real identity of an Independent Union if the Company meddled with Union fees.

A motion was made and carried that dues be paid at regular monthly meetings. The vote was unanimous.

A motion was made and seconded that the word "assessment" be stricken from Article VIII. Motion was passed.

A motion was made and seconded that the changing of the By-Laws be made at regular annual meetings or at any special meetings called for that purpose.

A motion was in order to accept these By-Laws. The motion was seconded and passed.

The directors were selected from the Departments as follows:

Pattern Shop—Carpenters—Flask Shop	1
Drafting Room—Engineering Department	1
Maintenance—Electricians—Garage	1
Furnace—Ladle—Yards—Truckdrivers	1
Machine Shop	4
Foundry	3
Welder	1
Office—Clerks	1
	<hr/>
	13

The thirteen members of the board of directors are:

468 Mr. Mitschka	Mr. J. Trost
Mr. A. Prodehl	Mr. L. Kabricky
Mr. F. Wilson	Mr. E. Dearth
Mr. Van Den Heutel	Mr. S. Adamski
Mr. Ben Moebus	Mr. W. Stichmann
Mr. Martin	Mr. W. Ewart
Mr. Ludwig	

The meeting was adjourned at 4:30 P. M.

Victoria E. Worke.

469 A meeting of the board of directors was held at 4:30 P. M. on April 24th, 1937 on the third floor of the North Avenue Auditorium.

Officers of the Union were elected by the Board of Directors.

Mr. Fred Wilson—President
 Mr. Albert Prodehl—Vice-President
 Mr. Benn Moebus—Secretary
 Mr. Stanley Adamski—Treasurer
 Miss Victoria Worke—Assistant Secretary.

MICRO CARD

TRADE MARK 

22

39



65



1385

The By-Laws for the Board of directors were read and accepted.

The new treasurer made a motion that the Mitchell Street Bank be the depository bank for the Union. The motion was carried.

There was a motion made and seconded and unanimously passed that the position of the assistant secretary be at the meeting whereby the client and this board is now authorized to select the assistant secretary. Thereupon Miss Victoria Worke was selected as Assistant secretary with the usual duties of an assistant secretary.

(At end of first paragraph 11.)

Excepting the application of Mr. Ernest Deardth and his application will be reserved for further consideration.

It was decided that the board of directors meet with the employer on Monday afternoon, April 26, 1937 at 4:00 P. M.

The following resolution was unanimously passed that this meeting be adjourned until next Saturday at 2:30 P. M.

Victoria E. Worke,
Assistant Secretary.
April 26, 1937.

470

Your Board of Directors of the Independent Union of Falk Employees met in the main dining room of the Falk Corporation at 4:00 P. M. and presented the following requests to Mr. Harold Falk on Monday, April 26, 1937.

We, the Board of Directors of the Independent Union of Falk Employees, request that effective May 1, 1937, the hourly pay of all employees be increased as follows:

Anyone receiving 50c or less be increased a minimum of 10c per hour and that those now receiving 60c an hour or over be increased a minimum of 5c per hour.

We also request the immediate reinstatement of the following men: Hugh Hahn, Fred Douglas, and James Jacobus.

(Signed) Bernard Moëbus,
Secretary.

His reply to the first request was the following:

That some men had received a raise on April 15, 1937, and if he agreed to a 10c an hour minimum raise they would average approximately 15c an hour. After considerable discussion Mr. Harold Falk was asked if he would agree to a minimum raise of 5c per hour to all hourly men, based on their hourly rate as of April 1, 1937. Mr. Harold Falk agreed on a graduated raise with a minimum raise of 5c per hour to all hourly men based on their hourly rate to become effective

May 1, 1937, and that piece work rates would be increased 5%. Mr. Falk stated that going over a payroll of 1300, there was bound to be some mistakes and this should be taken up with the director or director in charge of their department.

The monthly people were also to be increased 5%.

Mr. Harold Falk pointed out that the policy of the company had been to keep their employees on the payroll regardless of age and that these men should not expect to have the earning power of younger men who were more productive. He pointed out that some companies discharge men after a certain age limit.

To the requests of reinstating the men who were discharged, he replied that he had been in touch with Mr. Clark who is the representative for the National Labor Board and after laying the evidence before him, was advised that he was entirely within his rights in discharging these men for conclusive evidence of coercion, but stated that he was willing to cooperate with the Independent Union and take the men back.

Your secretary then got in touch with two of the discharged men and made arrangements for them to meet with Mr. Harold Falk on Tuesday afternoon, and is at present trying to locate the third man.

Mr. Falk then suggested the drawing up of a policy regarding the working conditions, holidays, methods of pay, etc. This he explained would avoid a lot of unnecessary decisions, especially regarding holidays. Whenever there is a holiday, election, etc., there is a lot of unnecessary quibbling regarding the method of pay. He mentioned the fact that most other companies do not pay double time on Sundays and holidays and that some of the men had made a practice of taking off during the week and then working Saturdays and Sundays for overtime pay.

471 The request for the increase of the smoking period was granted. The hours to be from 7:00 to 8:00 A. M., from 12:00 noon until 1:00 P. M. and from 4:30 P. M. on.

Mr. Kubricky brought up the matter of wage adjustment for the seven or eight men who were transferred from the small molding floor to the large molding floor. Mr. Falk promised to look into this and to make any necessary adjustments. Mr. Stickmann complained about a top low top wage for the welders, that some welders were reaching the top goal and had nothing to look forward to. He pointed out that the top scale was below the other shops doing similar work, and requested that the top scale be raised to 90c an

hour. Mr. Falk agreed to it, but with the understanding that they would hear about it if their work did not merit it.

A question of bonus was left open for discussion for the following reasons:

Mr. Harold Falk pointed out that at present he had received the report of the first two months of operation, and that he recalled a foundry statement showing a profit of \$10,000.00 for January, and a February report showing a \$7,000.00 loss. So the profit for operation for the first two months in the foundry only amounted to \$3,000.00. He stated that when you figure they have to operate on a day such as Washington's Birthday, and they have to pay double time, that you could figure that a premium of \$5,000.00 was chargeable to the double time operation of the foundry on that day. He also pointed out the fact that at present the company obtained from the bank a \$1,000,000 loan and that this must be paid back out of earnings before they could realize a profit, but he by no means closed the question entirely. He stated that they would know about September or October what their approximate earnings would be for the year and at that time be able to re-open the question. He further stated that should they be able to definitely promise a bonus before this time that he would reopen the question himself.

Mr. Van Den Huevel called Mr. H. Falk's attention to the fact that the yard gang were getting no overtime, but were cut to a 40-hour week, while the rest of the plant was working more. He agreed to look into the matter and should the amount of work in the yard permit it, would grant it.

The meeting was adjourned at 5:45 P. M.

Victoria Worke
Secretary.

472

May 1, 1937.

The meeting of the Board of Directors was held directly after the meeting of the Union members on May 1, 1937 at 4:30 P. M.

Mr. Fred Wilson, Presiding.

Mr. Bernard Moebus, acting secretary.

Miss Victoria Worke, assistant secretary.

Since there was no new business, the chairman urged the directors to open a drive to gain new members. Mr. Wilson with Miss Worke were to bet with Mr. Prodehl and the remaining directors that they would get the most members. The loser to buy each member in the board a twenty-five cent drink.

Several bills were brought up and were passed upon to be paid by the secretary. Members who had money taken off their check for time taken off in organizing were to be paid for the amount taken off.

The salary of the two secretaries were discussed. The secretaries were paid for their work during the week of organizing. Mr. Moebus was paid Ten Dollars (\$10.00), Miss Worke Fifteen Dollars (\$15.00). The monthly rate was not discussed.

Discussion of a new hall was brought up. Each director was to do his part in searching for a new hall in a convenient spot and at a reasonable price.

The meeting was adjourned at 5:30 P. M.

Victoria E. Worke.

473 Minutes of the Independent Union of Falk
 Employees
 held June 5, 1937.

The third monthly meeting of the Independent Union of Falk Employees was held on June 5, 1937 at 2:30 P. M. at the Bohemian Hall.

Mr. Wilson presiding as President.

Mr. Moebus as secretary.

Miss Worke as assistant secretary.

Twelve out of the thirteen directors were present. Mr. Joe Trost absent because of illness.

The minutes of the last monthly meeting were read and approved as read.

The minutes of the Board of Directors were read. They stand approved as read.

Old Business.

A report on the bet among the directors was made. Mr. Prodehl was declared the winner. Mr. Wilson brought in twelve new members. Mr. Prodehl brought in thirteen. The order to treat all the directors to a twenty-five cent drink.

New Business.

A motion was made and seconded that the Board of Directors ask the management for a wash room for the yard men.

A vacation period was discussed.

A motion was made to ask for a vacation beginning July 1, 1937 ending July 6, 1937; to be paid for three days, the 1st,

2nd, and the 6th. Everyone to be included in this vacation. Allowances were to be made for those in the

Payroll
power house
telephone
furnace

these departments to get their three days any other time.

The motion was seconded and carried.

The Tentative Working Agreement was read by the President. The agreement was not discussed until further notice.

A motion was made and seconded that the board of directors ask the management for permission to post on the bulletin the Tentative Working Agreement.

A motion was made to have Independent Union buttons. The motion was carried.

Another motion was made to have the Board of Directors get samples from concerns handling buttons then bring the samples at the next meeting for a vote. The motion was carried.

474 A motion was in order that the Independent Union buttons to be permanent ones. The motion carried.

A suggestion was made to have the secretary state approximately the number of Independent Union members. Mr. Moebus, secretary, stated that there were 800 or more members.

It was resolved that the meeting be adjourned. The meeting was adjourned at 4:15 P. M.

Victoria E. Worke,
Assistant Secretary.

475

Meeting of the Board of Directors
June 5, 1937.

Mr. Wilson presiding as president.

Mr. Moebus secretary.

Miss Worke assistant secretary.

No old business brought up.

New business. A suggestion was made to have members of the union present their grievances to the directors in charge. It was suggested that this idea be brought up before the members.

A motion was made and seconded that Mr. Wilson make an appointment with the management on Monday in order to bring up the requests made by the members.

The president mentioned that he knew of several firms in which he would get in touch with concerning the buttons but

stated that if any of the directors knew of other firms, to get in touch with them also.

The salaries of the two secretaries were discussed. Mr. Moebus and Miss Worke both received \$20.00 each.

It was resolved that the meeting be adjourned. The meeting was adjourned at 5:30 P. M.

Victoria E. Worke,
Assistant Secretary.

476 Minutes of a Meeting Held With the Management June 7, 1937.

A meeting held with the management on Monday, June 7, 1937 at 4:00 P. M. in the main dining room of the Falk Corporation.

Ten out of the thirteen directors were present.

The first request brought up before the management was the vacation period beginning July 1, 1937 through July 6, 1937—to be paid for the 1st, 2nd, and 6th.

Mr. H. S. Falk stated that the discussion of a bonus would come up if the vacation period was granted, thus detracting from the shop earnings.

In case the plant is shut down for a day, the following expenses which may be classed as fixed or continuing, will not be absorbed in cost of production, and so become a direct charge against profit and loss:

Depreciation and Insurance.....	\$1,000.00
Property taxes	250.00
Fixed salaries (except officer), overhead expenses of sales and administration (advertising, branch offices, research, supplies, etc., but not including commissions or reserves for bad debts).....	1,100.00
Interest	200.00
	<hr/>
	\$2,550.00

In addition to the foregoing, the loss of net profit on one day's production of \$25,000.00 average would be \$1,250.00 on a 5% basis. This makes a total of \$5,500.00 less through closing except fixed monthly salaries. If wages were paid to all employees, the additional loss would be around \$7,000.00 per day, a total of approximately \$12,500.00 per day.

There would no doubt, be other expenses not so obvious or capable of estimating, such as furnace attendants, power plant employees, etc.



Mr. Falk felt that those already getting vacations such as the power house, and the office employees were not to be entitled to another vacation; but stated that he would consider the matter and give his decision within a few days.

The second request made was asking permission to place on the bulletin board the Tentative Working Agreement.

Before giving his permission Mr. H. S. Falk stated that it would be wiser to condense this statement. Mr. Falk also suggested that instead of calling this a Tentative Working Agreement that it be changed in form to a statement of policy.

By condensing this form you could still serve the purpose leaving out a good many of these details but touching each statement so that we could later arrive at a mutual understanding.

477 It was later suggested that a copy be made for each employee in the shop instead of placing a copy on the bulletin board.

The third request brought up was somewhat of an individual case. Those men who were making 50c an hour or less were to receive a minimum rate of 10c per hour. Mr. Wilson brought up the fact that one man in the heat treating department did not get the 10c minimum rate but a 5c rate and asked that this be fixed with back pay as of April 1, 1937. Mr. H. S. Falk said that this would be taken care of immediately and was sorry that this error had happened.

The fourth and last request was for a new wash room for the yard men.

Mr. H. S. Falk realized that they were sadly in need of a wash room. He stated that preparation would be made for a temporary wash room to be set up in the pattern storage; but that it would take quite some time before a permanent place would be established because of lack of room.

The meeting was adjourned at 5:30 P. M.

Victoria E. Worke,
Assistant Secretary.

478 Minutes of a Meeting Held With the Management. June 11, 1937.

A meeting was held with the management on Friday, June 11, 1937, at 9:00 A. M., in the main dining room of the Falk Corporation.

The topic of discussion at this meeting was Mr. H. S. Falk's decision on the vacation period. Mr. H. S. Falk announced

that he would give a two-day vacation with pay on the 2nd of July and the 6th of July. This vacation to include everyone. The board of directors would not accept this decision.

After some discussion Mr. H. S. Falk stated that he could not give a three day vacation as asked for, because the request in a way was unreasonable inasfar as those who already were receiving vacations with pay; but was willing to give two days with pay including those who were getting vacations.

Mr. Fred Wilson asked Mr. H. S. Falk to compromise in some way in order to give the shop the three days asked for. He felt he could not go out in the shop and tell the men that only two days were given. More discussion followed. Mr. Ewart then stated that in order to give the shop the three days asked for, to omit the office force from this request for there had been rumors to the effect that it would make no difference with the office whether they got a vacation for that period. Mr. H. S. Falk would not accept this suggestion because he felt that a request made by the Union should involve everyone.

Mr. A. W. Prodehl suggested that Mr. H. S. Falk give the shop three days vacation with pay for 24 hours, and the office to have one day on the 6th of July. This suggestion was favorable to Mr. H. S. Falk. Mr. A. W. Prodehl asked for a ten minutes recess to go to the drafting department and see if that arrangement would be satisfactory to the men there. Mr. Prodehl stated that this arrangement was agreeable to the majority of the engineers.

The request granted was:

The employer will grant three days (July 1, 2, and 6) vacation with pay (for this year only) to all hourly employees. All others now receiving vacations will be granted one day July 6, 1937. Vacation to be paid on the standard rate for a three eight hour basis.

A request was made for more parking spaces and oiling of the roads around the plant to keep the dust down. Mr. Falk then promised that, on some warm day he would top-surface the road, and leave the parking problem up to the men in the engineering department.

Mr. Wilson, on behalf of the directors, thanked Mr. H. S. Falk for granting the vacation period.

The meeting was adjourned at 10:00 A. M.

Victoria E. Worke,

Assistant Secretary.

479 Secretarial Report for May and June 1937.

June 18, 1937.

Your Board of Directors have acted upon 858 applications to date, and of these 858 applications, 37 were found to be ineligible, leaving a total of 821.

Of these 821 applications 692 have paid for May, and 601 for June, making a total of 1293 paid members for the two months; or \$646.50 received in dues plus \$14.85 cash received in a special collection at the 2nd meeting at the North Avenue Auditorium, making a total of \$661.35 received to date.

Signed Bernard Moebus,

Sec.

v/w

480 Financial Report for May to June 18, 1937 Inclusive

Received from secretary

\$661.35

Disbursements:

Organ. Expense—Charter, seal, etc.	\$22.80
Printing for applications and notices	8.50
Printing meeting notices	4.75
Rent for N. A. Auditorium	40.00
Printing for receipts	9.50
Printing monthly meeting cards	8.00
Special Delivery—Fred Douglas	.13
Secretarial Salaries	30.00

(The following payments are to reimburse the following men for time taken off work during organizing.)

John Mitschka	\$ 5.33
Wm. Kirch	7.36
John Wolf	6.37
Frank Ruscitti	2.48
Robert Gillette	2.28
Leslie Greget	8.15
Dan Martin	4.81
Herman Schneider	2.66
J. Sattler	1.25
Joe Trost	9.72
Stanley Adamski	8.33
Fred Wilson	7.60
Carl Menz	4.45
Frank Kokalj	3.00
Matt. Bernklau	2.87
M. Gagliano	1.50

Independent Union Exhibit 2-B.

1133

Elmer Kothrade	2.67
Rent of Bohemian Hall—3 mos.	15.00
Printing membership cards, notices, and stamps	25.50
Frank Ruscitti—time spent off work at directors meeting	3.36
Secretarial salaries	40.00
Stamp Pad	3.15
Printing Monthly notices	11.50

Total Disbursements 303.02

Balance in Bank 358.33

Signed Stanley J. Adamski,
Treas.

Auditing Committee
A. W. Prodoehl
Fred C. Wilson

481 Minutes of the Independent Union of Falk Employees
held
June 26 1937.

The fourth monthly meeting of the Independent Union of Falk Employees was held on June 26, 1937 at 3:00 P. M. at the Bohemian Hall.

Mr. Wilson presiding as president

Mr. Moebus as secretary

Miss Worke as assistant secretary

Seven out of the thirteen directors were present.

The minutes of the last monthly meeting were read and approved as read.

The minutes of the Board of Directors meeting were read and stood as read.

The minutes of the Board of Directors held with the management on June 7, were read and approved. The minutes of the Board of Directors held with the management on June 11, 1937 were read and approved.

The secretary have his report and stated that up to the present time the Union has 859 members.

The report of the Treasurer was given and stood as read.

Unfinished business regarding the buttons. The directors had corresponded with three firms concerning these buttons and out of the three, two were answered. The directors asked

that they be given more time in which to correspond with other firms doing business in this line. The request was granted.

New business.

Question was brought up regarding men working on the Saturday the Union meeting was held. It was stated that something be done about this or the meetings will have to be held on a day when all members can attend. Mr. Wilson stated that he had talked to the management regarding this situation and was told that the reason for working on that Saturday was because of the six day vacation and the work had to be done.

It was resolved that the meeting be adjourned. The meeting was adjourned at 3:20 P. M.

Victoria E. Worke,
Assistant Secretary.

Meeting of the Board of Directors.

June 6, 1937.

Mr. Wilson presiding as president

Mr. Moebus secretary

Miss Worke assistant Secretary

No old business was brought up.

As there were very few members at the Union Meeting there was little or no discussion to be had at the meeting of the Board Directors.

Directors were urged to continue their search for other firms handling buttons.

It was resolved that the secretaries be paid for their months work. Mr. Moebus received \$20.00, and Miss Worke received \$20.00.

It was resolved that the meeting be adjourned. The meeting was adjourned at 3:50 P. M.

Victoria Worke,
Assistant Secretary.

Copy of Minutes of Meetings of

Independent Union of Falk Employees.

Alexander, Burke & Clark

Attorneys at Law

901-906 Title Guaranty Building

Milwaukee

494 INDEPENDENT UNION EXHIBIT NO. 3.

Application

(Union Label—37)

I hereby apply for membership in the "Independent Union of Falk Employees," this will not include executives, assistant executives, officers, assistant officers, superintendents, assistant superintendents, foremen or assistant foremen of Falk Corp. of Milwaukee.

The purpose of said organization shall be to aid its members in the regulation of wages, hours, conditions of employment, including the right to act as the representative of its members in entering into contracts with their employer for the purpose of collective bargaining.

If I am accepted as a member, I agree to be bound by the Articles of Organization and By-Laws.

I further agree to submit to the Board of Directors of said organization, any dispute between myself and my employer, pertaining to wages, hours, working conditions, or other mutual aid or protection and to abide by the decision of said Board.

I expressly nominate and appoint the Board of Directors of said organization as my representative for the purpose of collective bargaining.

If I am accepted as a member in said organization, I agree not to withdraw without giving at least ten (10) days' written notice.

In the event I am accepted as a member and withdraw, I agree to forfeit my rights as a member unless otherwise ordered by the Board.

Clock No.

Name

Address

Date

.....

Dated
Nov. 2,
1937.

2357

UNITED STATES OF AMERICA.

BEFORE THE NATIONAL LABOR RELATIONS BOARD,

Twelfth Region.

In the Matter of

The Falk Corporation

and

Amalgamated Association of Iron,
Steel and Tin Workers of North
America, Lodge 1528.

Case No. XII-C-57.

INTERMEDIATE REPORT.

Upon charges duly made, and acting pursuant to authority granted in Section 10(b) of the National Labor Relations Act, approved July 5, 1935, Nathaniel S. Clark, agent of the National Labor Relations Board, designated by National Labor Relations Board Rules and Regulations—Series I, as amended, Article IV, Section 1, issued its complaint therein dated August 4, 1937, against The Falk Corporation, respondent herein. The complaint and notice of hearing therein were duly served upon respondent on August 4, 1937, and upon the Independent Union of Falk Employees on August 6, 1937, in accordance with said Rules and Regulations—Series I, Article V, Section 1. The complaint was amended by motion at the hearing.

The complaint alleged in substance as follows:

The respondent, The Falk Corporation, is a Wisconsin corporation with an office and plant located in Milwaukee, Wisconsin, where it is engaged in the design, manufacture, sale and distribution of varied machine products, maintaining sales agencies and district offices in 38 cities of the United States and foreign countries. The respondent causes a substantial part of the raw materials purchased and products manufactured to be transported in interstate commerce.

All the employees of the respondent at the Milwaukee plant, except supervisory employees, draftsmen, employees in the general office and employees of the payroll department, constitute a unit appropriate for the purpose of collective bargaining. The Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge 1528, is a labor organ-

ization which represents a majority of the employees in said unit but that at all times the respondent refused to bargain and these acts of the respondent constitute an unfair labor practice within the meaning of Section 8, subdivision (5) of the Act. That respondent discharged Anton Kinch for the reason that he engaged in concerted activities with other employees and that by reason of the said discharge is discriminating in regard to the hire and tenure of employment and thereby is engaging in unfair labor practices within the meaning of Section 8, subdivision (3) of the Act.

That respondent has dominated and interfered with the formation and administration of a labor organization at the Milwaukee plant known as the Independent Union of Falk Employees, thereby engaging in an unfair labor practice within the meaning of Section 8, subdivision (2) of the Act. By all of said acts, the respondent did interfere with, restrain, and coerce its employees in the exercise of the rights guaranteed in Section 7 of the Act, and is engaging in an unfair labor practice within the meaning of Section 8, subdivision (1) of the Act.

The aforesaid acts of respondent constitute unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1), (2), (3), and (5), and Section 2, subdivisions (6) and (7) of the Act.

The respondent, the Falk Corporation, in its answer alleged in substance as follows:

Denied the allegations of the complaint, except as to corporate existence and interstate business of the corporation. That the discharge of Anton Kinch was for legal cause.

The International Union of Operating Engineers, Local 311, (A. F. L.) set forth in a petition to intervene substantially as follows:

That Local 311 is a labor organization that has been selected by a majority of the power house employees to represent them as a bargaining agent with the respondent and that the said power house employees constitute an appropriate unit for the purpose of collective bargaining. That the respondent has violated Section 8, subdivisions (1), (2), (3), and (5) of the National Labor Relations Act in its relations with the power house employees.

The Independent Union of Falk Employees set forth in a petition to intervene substantially as follows:

That it is an organization of employees of The Falk Corporation and has in its membership over fifty per cent of the

Intermediate Report.

employees, exclusive of supervising employees. That said membership constitutes an appropriate unit for the purpose of collective bargaining.

Pursuant to the notice of hearing, the undersigned, as Trial Examiner of the National Labor Relations Board, designated by the said Rules and Regulations—Series 1, as amended, Article IV, Section 2, and Article II, Section 23, conducted a hearing August 16 to 21, and August 23 to 25, 1937, at 2360 Milwaukee, Wisconsin. The respondent appeared by Lamfrom, Tighe, Engelhart and Peck; the International Union of Operating Engineers, Local 311, appeared by A. S. Goldberg, and the Independent Union of Falk Employees was represented by Giles F. Clark. All participated in the hearing.

At the opening of the hearing the petitions of the International Union of Operating Engineers, Local 311, and the Independent Union of Falk Employees to intervene were granted. Local 311 was required to prepare an amended petition setting forth more specifically the charges against the respondent and respondent filed an amended answer thereto. Counsel for the Board at the close of the hearing moved to amend the complaint to conform to the proof. The motion was granted. Counsel for the respondent then made several motions to dismiss the complaint. The motions were denied. At the close of the hearing counsel for respondent moved that the amended petition of the International Union of Operating Engineers, Local 311, be dismissed. The motion was denied.

Full opportunity to be heard, to examine, and cross-examine witnesses and to produce evidence bearing upon the issues was afforded to all parties. Counsel for the parties at the close of the hearing did not avail themselves of the opportunity for oral argument, and no request was made to file briefs. The undersigned advised counsel that if oral argument before the Board was contemplated such request must be made in writing direct to the Board within five days after the close of the hearing.

Upon the record thus made, the stenographic report of the hearing and all the evidence, including oral testimony, documentary and other evidence offered at the hearing, the undersigned makes, in addition to the above, the following specific findings of fact.

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FINDINGS OF FACT.

Section I. Respondent.

1. The respondent, The Falk Corporation, was organized and incorporated on June 3, 1895, as The Falk Manufacturing Company, and on February 18, 1899, the name was changed to The Falk Company. The Falk Company was dissolved in May, 1921, and The Falk Corporation was organized as a Wisconsin corporation with an office and plant located in Milwaukee, Wisconsin. The corporation is engaged in the design, manufacture, assembly, sale and distribution of steel castings, gears, couplings and other varied machine products, which are sold and distributed through sales agencies, district offices and sales representatives in 62 cities of the United States and Canada, Mexico, Philippine Island, Hawaii, Cuba, and South Africa. The respondent employs a total of approximately 1500 people, of whom approximately 1300 are in the maintenance and production departments.

Section II. Unfair Labor Practices.

A. Employee's Association.

2. The history of labor organizations in the respondent's plant dates from about 1906, when the International Moulders Union of North America called a general strike in Milwaukee, Wisconsin. This strike reduced production in the plant for a time and without recognition of the union production was gradually increased as the Moulder's union strength was neutralized by employment of non-union workmen. From 1906 to 1933 there were no labor disputes or disturbances in the plant although several efforts were made by the A. F. L. unions to organize. In 1933, as a result of the enactment of Section 7(a) (N. I. R. A.), Harold Falk, the works manager, called a meeting of the employees to organize some type of representation plan and advised against an outside labor organization, referring particularly to the organizer of the Metal Trades Division of the Milwaukee Federated Trades Council. Falk further advised the employees that the corporation would not consider a closed shop.

3. Following the advice of Mr. Falk, the Works Council was organized. It was composed of representatives of the employees in the plant who had been continuously employed by the Company for a period of one year preceding their

nomination and appointed representatives of the management. The Chairman and Secretary of the Works Council were appointed by the management. This plan was clearly in violation of the Wagner Act, as evidenced by the fact that after the Supreme Court upheld the Wagner Act on April 12, 1937, the Works Council was discontinued. It should be noted that the respondent made no effort to comply with the Wagner Act from the date of its passage on July 5, 1935, until April 12, 1937. The testimony of N. S. Falk discloses that the corporation and its agents have consistently opposed every labor organization because of the fear of a closed shop as shown by their absolute refusal to deal with any "outsider", that is, a representative other than one of its own employees. Falk further testified that the Works Council during its existence did not accomplish anything for the employees that the corporation would not have done without the Council.

4. Certainly, the history of labor relations in the plant of the Falk Corporation up to April, 1937, was not conducive to self-organization amongst its employees and it was well understood by the employees that unions especially with "outside" affiliation were "outlawed" in the plant. It is not surprising then that when the Works Council held its last meeting on April 8, 1937, almost instantly the organization of the Independent Union of Falk Employees was started by certain employee representatives of the Works Council with the knowledge and consent of Harry Green, superintendent of the machine shop and former chairman of the Works Council. The personnel manager, Mr. Hydar, of the corporation, who was secretary of the Works Council assisted in notifying the past and present employee representatives of the Works Council to meet in the plant hospital on April 12, 1937. His denial of knowing the purpose of the meeting can be given no weight as the purpose of the meeting was generally known. Hydar's inability to remember who requested him to call the representatives, his insistence that the person was an employee, his decided lack of memory in matters of importance, makes it appear that he either was not telling the truth or has a very selective memory for facts.

5. The Independent Union of Falk Employees started organizing on April 12, 1937, and on April 23, 1937, received written notification from the Corporation that "after conference with your committee, and upon your statement that your organization represents the majority of our employees, and

that you request that we enter into negotiations with you as the collective bargaining agency for all of our employees, we advise you that we will so recognize your organization."

6. An examination of the relation of the Corporation to the Independent Union during this period conclusively shows the cooperative arrangement existing.

7. During April 12, 13, and 14, 1937, a committee of approximately 23 past and present Works Council members met in the hospital connected with the plant for several hours each day and discussed the formation of the Independent Union. The workmen attending these meetings were paid for the time in attendance. Later, all had deductions made from their pay checks by the Corporation, after the matter had been called to its attention by the National Labor Relations Board.

8. At least two of the company representatives were called into these meetings to explain the Wagner Act and there was some discussion with Harold Falk, works manager, concerning an increase in wages which had been under advisement by the Works Council. Mr. Falk testified that the increase had been tentatively set for June 1 and when it was suggested by one of the committee that it would be a good idea to advance the date to May 1, he agreed with the suggestion. There is testimony to indicate that some mention was made of the C. I. O. in this connection and that if the increase was made effective May 1, it might be the means of avoiding some difficulty. While the evidence is very conflicting at this point, the undersigned, considering all the testimony and the surrounding circumstances, believes that the change in effective date from June 1 to May 1 was made to discourage the Amalgamated activities in the plant. The promise of change in effective date was made to a committee which was just starting an independent union in a plant where the C. I. O. had been actively engaged in organization work and thus placed the Independent Union in a very advantageous position in securing members.

9. The attorney employed by the Independent Union was suggested by Harold Falk and the appointment for the committee to see the attorney was made by Harold Falk. It is true that the general committee appointed three of its members to call upon Mr. Falk for this purpose, but it is an established fact that Falk suggested Mr. Burke as attorney, knowing that he had acted for other independent unions. Leslie Greget, one of the members of this committee,

testified he did not know the attorney suggested by Falk and then later in his testimony made it appear that he had heard of the attorney. Greget at a meeting of Falk employees on April 18, when asked where the committee had secured their attorney, stated that he had known the attorney for some time and failed to state that Falk had suggested the attorney. Greget's failure to advise the meeting that Falk had suggested the attorney resulted in a very heated argument at the meeting and may have been one of the contributing factors in abandoning the formal organization of an independent union at this meeting.

10. The committee employed the attorney to handle their affairs with the understanding that if the union organization was completed he would be paid; if not, there would be no charge. During the organizing of the Independent Union several members of the committee spent much time in conference with the attorney. No deductions were made in their pay checks for the time so spent until some while later, after the failure to make such deductions had been called to the attention of the respondent by an agent of the National Labor Relations Board.

11. A general meeting was held on April 18 which was attended by several hundred employees. The meeting adjourned without taking any organizational action and the general feeling was that the organization should run along as an association. Mr. Burke of the law firm of Burke & Clark attended this meeting and explained the method of organizing,

the Article of Association, and the advisability of incorporating. The next day, April 19, three employees of The Falk Corporation, Fred Wilson, Joe H. Trost and Carl Menz, who had attended the meeting of April 18, and without authority from the meeting or the original organization committee, went to the office of Burke & Clark and signed the Articles of Association which were taken at once to the State Capitol at Madison, Wisconsin, and filed, and on April 20, filed in the Register of Deeds Office at Milwaukee. On the same day the Independent Union notified The Falk Corporation that the members of this corporation (Independent Union) would be limited to employees of the company; that the corporation is to represent its members for collective bargaining; that the corporation has approximately 400 members signed to applications; that the corporation has reason to believe it will have a majority soon; and that the respondent should name the place and state the time to meet for the purpose of collective bargaining.

12. The three signers of the Articles of Association representing the corporation (Independent Union), without authority of the organizing committee of employees who had secured several hundred application cards, met with Falk and without submitting any evidence to the respondent to show they represented a majority of the employees, secured recognition for the Independent Union, not for the members of the Independent Union as requested in its letter of April 20, but as representative of all the employees of the respondent. The evidence discloses that negotiations were started but discontinued pending the outcome of this hearing.

13. On April 24, the day after the Incorporating Committee had been recognized as exclusive bargaining representatives, a meeting was held at which the organization was completed by the election of 13 directors representing the 2367 different departments of the plant. The carelessness with which directors were elected is very well disclosed by the fact that a sub-foreman was elected by his marking the ballots of the workmen in his department, many of whom could not read or write. This sub-foreman later resigned and the Board of Directors elected an employee in his place. The election of 13 directors by the employees of the 13 different departments of the plant, at a general meeting of all employees, further discloses the utter disregard of the first principle of self-organization, freedom of choice in the selection of representatives.

14. The meeting adopted by-laws which had been prepared on the basis of the Articles of Incorporation drawn by an attorney selected by the respondent's agent, the contents of which the members did not and could not pass upon. The Articles of Incorporation provide that the Independent Union of Falk Employees, as a corporation, shall have a president, vice-president, secretary and treasurer, who shall be elected by the 13 directors; that the Board of Directors shall act as a supreme governing body of the corporation and have the sole right to act as the representative of the members of the corporation in all negotiations with The Falk Corporation. Furthermore, the corporation shall be composed of employees of the respondent entitled to all rights, privileges, and benefits during the time the member is employed by the respondent.

15. Under this form of organization the members could be saddled with a contract running for years, none of which terms the members were in accord with, and any director who was independent could be discharged and not being

an employee of The Falk Corporation could not hold office. It is not unlikely that this would occur as shown by the discharge of Anton Kinch, referred to in Section II, (D) of this report, who was a member of the Works Council, 2368, and not acceptable to the agents of The Falk Corporation.

16. The respondent by its officers and agents April 12, 13 and 14, 1937, formed and sponsored the Independent Union of Falk Employees as a labor organization of its employees.

17. The Independent Union of Falk Employees is a labor organization within the meaning of the National Labor Relations Act.

18. The respondent is dominating and interfering with the administration of a labor organization of its employees by the activities hereinbefore set forth and is aiding and supporting said labor organization.

B. Unions.

19. The Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge 1528, is a local lodge of the Amalgamated Association affiliated with the Committee for Industrial Organization and is a labor organization within the meaning of the National Labor Relations Act.

20. The International Union of Operating Engineers, Local 311, is a local chartered by the International Union affiliated with the American Federation of Labor and is a labor organization within the meaning of the National Labor Relations Act.

C. Collective Bargaining.

1. The Unit.

21. The testimony discloses that the International Union of Operating Engineers, Local 311, includes in its membership workmen engaged in the operation of steam driven equipment. Further, that of the 17 workmen eligible for membership employed by the respondent, 14 had indicated a desire to have Local 311 represent them as their bargaining agent. The

Amalgamated Association and Local 311 started organizing in the plant at about the same time and there is no evidence to show that the Amalgamated Association ever represented any of the engineers or attempted to bargain for them. The power house where all the engineers, except one, are employed is in a separate building, and oper-

ated as an independent unit with an engineer in charge. The desire of the engineers to be represented by Local 311 and the fact that the Amalgamated Association had no members in this group would indicate that the employees in the power house, including the two operators of steam-driven hoists make up an appropriate unit for the purpose of collective bargaining.

22. The employees of the power house, including the two operators of steam-driven hoists employed by the respondent, constitute an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the National Labor Relations Act.

23. The "Works Council" which had operated for many years in the Falk plant included the so-called production or plant employees, and only after the Independent Union was organized was any consideration given to including as members draftsmen and clerical employees. This undoubtedly was because the Amalgamated Association had secured a very large membership in the plant while it was known that the draftsmen and clerical employees would practically all join the Independent Union. The Amalgamated Association includes in its membership employees who are in the production department. The problem and interest of the plant workers and the basis of pay is different than that of the draftsmen and clerical employee. These differences are of such a nature that one could not bargain effectively for the other. For the

reasons stated herein the employees connected with the 2369 production department, except operators of steam-driven equipment, should be considered a separate unit from the so-called office employees which includes draftsmen, employees in the general office, and employees in the payroll department.

24. All the employees of the respondent, The Falk Corporation, except the supervisory employees, draftsmen, general office employees, payroll department employees and the engineers (power house and steam-driven hoist operators) constitute another appropriate unit for the purpose of collective bargaining, as evidenced by the membership qualifications of the Amalgamated Association and the practice for years past of the Works Council including only plant employees.

2. International Operating Engineers.

25. Sometime in February, 1937, Phil J. Kingsland, the business representative of Local 311, started to organize the engineers in The Falk Corporation and by the first part of April had secured the signatures of 14 of 17 engineers employed by the respondent. Mr. Kingsland then called upon Harold Falk to secure recognition for Local 311 and Mr. Falk advised he could see no reason why recognition should not be given but that he wanted to talk to the men and determine if they wanted to have Local 311 represent them as their bargaining agent. Subsequent to this a misunderstanding arose between Falk and Local 311 as to the wording on a postal card, sent out by Local 311, calling for a meeting of the engineers. As a result of this misunderstanding, Falk again talked to some of the engineers and placed in the hands of each engineer a letter which stated "We do not favor a union." The letter also made reference to the meeting of Falk with Kingsland and to rights of employees to join or not join a union. Such direct statement of the respondent's 2370 position with respect to unions could have only one effect on employees whose jobs are subject to the respondent's control, that is, to discourage membership in unions. Practically every one of the 14 engineers withdrew their applications from Local 311, and Burke & Clark, attorneys for the Independent Union prepared the letters of withdrawal for five of the engineers.

26. The records of Local 311 as to membership of the engineers were very unsatisfactory, consisting mainly of application cards which were incomplete in that there was no reference to the appointment of Local 311 as the representative for purposes of collective bargaining and were applications under which no rights were established until the applicants were accepted by Local 311. Further, there was no evidence of actual membership or the payment of dues. The proof was of such an indefinite nature that the undersigned can make no finding as to the designation of Local 311 by a majority of the engineers to represent them for the purposes of collective bargaining and consequently there was no refusal on that part of the respondent to bargain with Local 311.

27. The Amalgamated Association had been active prior to the formation of the Independent Union and had secured the signatures of several hundred employees to application cards. There is little doubt that both organizations conducted an in-

tensive campaign for members often times during working hours. The Amalgamated Association was at a very decided disadvantage with the attitude of Harold Falk against "outside" unions, being well-known among the employees, and the foremen in several instances openly opposing the Amalgamated Association and the C. I. O. In spite of these disadvantages the Amalgamated, during April, completed its organization, elected officers, and on May 5, met with representatives of the respondent to seek recognition which was denied on the grounds that the respondent had recognized the Independent Union as the sole and exclusive bargaining representatives of its employees.

28. The evidence is not conclusive that the Amalgamated Association had been designated as the representative for collective bargaining of all the employees, except the supervisory employees, draftsmen, general office employees, payroll department employees, and the engineers (power house and steam-driven hoists). The Amalgamated Association did not produce at the hearing any records to prove that it had been designated by a majority of the employees in the unit referred to herein. The statement was made by the financial secretary that the Amalgamated Association had approximately 700 members in the plant department, of approximately 1300 workers. He further stated "I have been told by numerous fellow-workers and also by some of the rival organizations that if it was possible, if it was definite, they would indicate that they wanted the Amalgamated Association to represent them as their bargaining agent." It should be noted that a very intensive drive for membership had been conducted by the Independent Union of Falk Employees, who had according to their records, been designated by 869 employees on July 26, in all departments, including office, clerical, and draftsmen who had designated the Independent Union as their bargaining agent. There is some testimony to show that many of the employees joined both the Amalgamated Association and the Independent Union.

29. The lack of definite proof of the Amalgamated membership and the fact that many employees joined both makes it impossible to determine that it had been designated by a majority of all the employees, except supervisory employees, draftsmen, general office employees, payroll department employees and power house employees (engineers and steam-driven hoist operators), and so the respondent did not refuse to bargain with a labor organization representing a majority of its employees in the appropriate unit.

D. Discharge

30. Anton Kinch had worked in the machine shop of The Falk Corporation for approximately seven years when he was discharged on December 31, 1936. According to the testimony of Harry Green, superintendent of the machine shop, Kinch started in the shop without any training or experience and acquired a fairly satisfactory knowledge of the work. At the time Kinch was discharged he was employed as an assembler. Green further testified that Kinch's work at all times was satisfactory.

31. During the latter part of 1936, Kinch was a representative on the Works Council, having been duly elected by the employees of his department. At the time of Kinch's election he at first declined to serve but at the solicitation of the respondent's representatives on the Works Council he finally consented to serve after stating that it should be understood that he, Kinch, was to be free to follow the dictates of his own mind on matters coming within the scope of the Works Council. This apparently was satisfactory to the respondent as Kinch then proceeded to take an active part in the affairs of the Works Council. Kinch not only incurred the displeasure of the respondent's representatives on the Works Council because of activities and interest in behalf of the employees, but also of some of the employee representatives. He always insisted on something of real value to the employees being discussed and considered at the meetings.

32. In the Fall of 1936, Kinch, as a representative of his department on the Works Council, started to discuss with the employees a plan for reclassification of duties and wage adjustments. This came to the attention of Harold Falk, who requested Kinch to discuss the plan in a conference which was held at Falk's office. It was agreed that Kinch later would submit the entire plan in writing to Falk. Kinch then prepared six petitions for the signatures of employees who approved of the plan and retaining one of these petitions placed the other five in the hands of other employees to secure signatures. The testimony discloses that the names of a substantial number of employees were secured partly during working hours. Kinch also made an investigation of the earnings of the respondent, salaries paid the executives, wages paid in other plants of a similar kind and used the information obtained to support his plan. The written plan was submitted to the Works Council who referred the matter to Harold Falk who prepared a written

reply to the Works Council opposing the plan. The Works Council disapproved the plan. The discharge of Kinch is directly the result of the activities referred to herein.

33. The Works Council governing regulations as adopted and approved by Harold Falk provide in Article XIII, Section "Guaranty of Independent Action": "Every employee representative serving on the Works Council shall be wholly free in the performance of his duties as such and shall not be discriminated against on account of any action taken by him in good faith in his representative capacity." Harry Green, the superintendent of the machine shop and chairman of the Works Council, interpreted this clause to mean activities of employee representatives outside of working hours. This interpretation in the light of time spent by representatives of the Works Council on business for the Council and the formation of the Independent Union is entitled to no consideration. Further, there was no showing that Kinch's advocacy of the plan or securing of signatures to the petitions resulted in any definite loss of time, or loss of production in the plant. Article XVI "Compensation to Representatives" contemplated compensation to employee representatives for time spent on Works Council business during working hours: "Employee representatives shall be compensated at their respective hourly rates for time spent at meetings of the Works Council and the Fact Finding Committee, and in performing during working hours such other duties as they may be called upon to perform under this plan." Mr. Green stated that this meant only such duties as are assigned to the employee representatives.

34. Harold Falk, works manager, stated that Kinch was discharged for, "Well, the circulating of the petition and his continued activity, poisoning the men." Falk also stated, "First of all, the original arrangement that I had with Kinch that he would put it in writing and see me and he started circulating petitions around the plant on company time against rules." However, Mr. Falk admitted, "there were no such written or posted rules, but we did not hire Kinch for that purpose." Falk advised Kinch was a fair worker and there was nothing against his record until the petitions were circulated. Falk testified that Kinch could not be reemployed because "I think Kinch is a very decided distributor." A consideration of the facts herein convinces the undersigned that Kinch was discharged because of being engaged in concerted activities with other employees for the purpose of collective bargaining and other mutual aid and protection.

35. Said Anton Kinch was discharged by Harold Falk, an agent of the respondent, on December 31, 1936, and since that time, refused employment by respondent for the reason that said Anton Kinch engaged in concerted activities, 2375 for the purpose of collective bargaining and other mutual aid and protection.

36. By said discharge and refusal to employ said Anton Kinch, respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act.

37. By said discharge and refusal to employ said Anton Kinch, respondent has discouraged membership in the labor organizations known as Amalgamated Association of Iron, Steel & Tin Workers of North America, Lodge 1528, the International Union of Operating Engineers, Local 311, and concerted activities amongst its employees.

III. Interstate Commerce

38. The Falk Corporation is a Wisconsin corporation with its general office and plant located in Milwaukee, and in the operation of its business maintains and operates sales agencies, district offices and sales representatives in 50 cities of the United States, six cities in the various provinces of Canada, two cities in the Republic of Mexico and in the Philippine Islands, Hawaii, Cuba and South Africa.

39. In the production of steel castings, helical gears, speed reducers, speed increasers, and various other machine products, the respondent uses large quantities of pig iron and scrap steel, the principal source of which is Pennsylvania and New York. Coal from Pennsylvania, silica sand and fire clay from Illinois, and a great variety of machine products from several states other than Wisconsin, are also used by the respondent. Of these materials approximately 65 per cent originates outside the State of Wisconsin, passing over many state boundaries in reaching the Milwaukee plant 2376 of The Falk Corporation. These materials purchased by the Corporation are received by rail and truck principally.

40. The manufacture of these materials into Falk products from the time it reaches the plant is one continuous movement.

41. Of the manufactured Falk products, 75 per cent represent sales to points outside the State of Wisconsin. These products are sold, distributed, and transported to pur-

chasers, dealers and others, being ultimately consumed nationally and internationally. The products so sold, distributed, transported and consumed are carried by mail, motor trucks and railroads to various sections of the country outside the State of Wisconsin and to foreign countries.

42. The principal users of Falk products by industries are: automotive, breweries and distilleries, cement mills, chemical plants, foundries, marine, mines, oil fields and oil refineries, paper and pulp mills, railroads, sand and gravel plants, rolling mills, and rubber mills.

43. The Falk Corporation's net billings in 1936 were \$5,308,761.37, of which amount the steel foundry accounted for \$1,463,247.46 and the machine shop accounted for \$3,843,513.91.

44. The activities of the respondent set forth in Section II above, occurring in connection with operations of the respondent described in this section, have a close, intimate and substantial relation to trade, traffic and commerce among the several states, and tend to lead to labor disputes, burdening and obstructing commerce and the free flow of commerce.

Conclusions and Recommendations.

Upon the basis of the foregoing findings of fact, the undersigned hereby determines and concludes:

1. Respondent, The Falk Corporation, by discharging and refusing to employ Anton Kinch and thus discouraging concerted activities amongst its employees; and by dominating and interfering with the labor organization known as 2377 the Independent Union of Falk Employees; and by sponsoring and contributing support to it; and by interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, as set forth in the above findings of fact, has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8, subdivision (1) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act.

2. Respondent, The Falk Corporation, by dominating and interfering with the administration of the Independent Union of Falk Employees and with the formation of this labor organization and by contributing support to this labor organization, has engaged in and is engaging in an unfair labor practice affecting commerce within the meaning of Section 8, subdivision (2) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act.

3. Respondent, The Falk Corporation, by discriminating in regard to the hire and tenure of employment of Anton Kinch and thereby discouraging concerted activities amongst its employees, as set forth in the above findings of fact, has engaged in and is engaging in an unfair labor practice affecting commerce within the meaning of Section 8, subdivision (3) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act.

Wherefore, the undersigned recommends that:

1. The respondent, The Falk Corporation, cease and desist from interfering with, restraining, or coercing its employees in the exercise of the rights of self-organization, to form, join or assist labor organizations to bargain collectively through representatives of their own choosing and to engage in concerted activities for the purpose of collective bargaining or other aid or protection;

2378 2. Respondent, The Falk Corporation, cease and desist from discouraging concerted activities amongst its employees or any labor organization, by discriminating in regard to hire or tenure of employment or any term or condition of employment;

3. Respondent, The Falk Corporation, cease and desist from dominating or interfering with the formation or administration of a labor organization known as the Independent Union of Falk Employees or any labor organization, and from contributing support to the Independent Union of Falk Employees or any labor organization;

4. In order to effectuate the policies of the Act, take the following affirmative action:

(a) Respondent, The Falk Corporation, offer to Anton Kinch employment in the position formerly held by him with all the rights and privileges previously enjoyed by him;

(b) Respondent, The Falk Corporation, make whole to Anton Kinch for any loss of pay he has suffered by reason of his discharge by payment to him of a sum of money equal to that which he would normally have earned as wages from the date of his discharge to the date of offer of employment, less the amount earned by him during such period;

(c) Respondent, The Falk Corporation, withdraw all recognition from the Independent Union of Falk Employees as representative of its employees for the purpose of dealing with it concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work and disestablish all relations with such organization;

(d) Post notices in conspicuous places throughout all departments of the respondent's plant stating, (1) that respondent will cease and desist in the manner aforesaid; and (2) that the respondent's employees are free to join 2379 or assist the Amalgamated Association of Iron, Steel & Tin Workers of North America, Lodge 1528, and the International Union of Operating Engineers, Local 311, or any other labor organization of its employees and that their status as employees of the respondent will not be affected by such action on their part; and (3) that the respondent is disestablishing all relations with the Independent Union of Falk Employees and withdrawing all recognition from it as a representative of the respondent's employees; and (4) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting; and

(e) File with the Regional Director for the Twelfth Region within ten (10) days from the service of this Intermediate Report, a report in writing setting forth in detail the manner and form in which the respondent has complied with the foregoing requirements.

It is further recommended that unless within ten (10) days from the service of this Intermediate Report, the respondent notify said Regional Director in writing that it will comply with the foregoing recommendations, the matter be referred forthwith to the National Labor Relations Board and that said Board issue an order requiring the respondent to take the action aforesaid.

/s/ James C. Batten,
Trial Examiner.

Dated November 2, 1937.

2380 BEFORE THE NATIONAL LABOR RELATIONS BOARD.

• • (Caption—XII-C-57) • •

**EXCEPTIONS OF THE FALK CORPORATION TO THE
INTERMEDIATE REPORT OF JAMES C. BATTEN,
TRIAL EXAMINER, DATED NOVEMBER 2, 1937.**

And now comes The Falk Corporation, by Lamfrom, Tighe, Engelhard & Peck, its attorneys, and excepts to the Intermediate Report of James C. Batten, Trial Examiner, which report is dated November 2, 1937, as follows:

1. Excepts to the 3rd Finding of Fact, and to the whole thereof, for the reason that said Finding of Fact is not a finding material to the issues in the matter, as set forth in

the complaint, and in the answer of the respondent, and for the reason that said Findings of Fact, and the whole thereof, is entirely immaterial to the issues in this matter.

And further, excepts to that portion of the 3rd Finding of Fact which reads as follows:

"* * * that the corporation and its agents have consistently opposed every labor organization because of the fear of a closed shop as shown by their absolute refusal to deal with any 'outsider', that is, a representative other than one of its own employees."

for the reason that such portion of said Finding of Fact 2381 is not supported by substantial evidence.

And further, excepts to that portion of the 3rd Finding of Fact, which reads as follows:

"Falk further testified that the Works Council during its existence did not accomplish anything for the employees that the corporation would not have done without the Council." for the reason that said portion of said Finding of Fact is not supported by substantial evidence.

2. Excepts to that portion of the 4th Finding of Fact, which reads as follows:

"* * * it was well understood by the employees that unions especially with 'outside' affiliation were 'outlawed' in the plant."

for the reason that said portion of said Finding of Fact is not supported by substantial evidence.

And further, excepts to that portion of the 4th Finding of Fact, which reads as follows:

"It is not at all surprising then that when the Works Council held its last meeting on April 8, 1937, almost instantly the organization of the Independent Union of Falk Employees was started by certain employee representatives of the Works Council with the knowledge and consent of Harry Green, superintendent of the machine shop and former chairman of the Works Council."

for the reason that that portion of the Finding, treating of the knowledge and consent of Harry Green is not supported by substantial evidence.

And further, excepts to that portion of the 4th Finding of Fact, which reads as follows:

"The personnel manager, Mr. Hydar, of the corporation, who was secretary of the Works Council assisted in notifying the past and present employee representatives of the Works Council to meet in the plant hospital on April 12, 1937."

His denial of knowing the purpose of the meeting can be given no weight as the purpose of the meeting was generally known. Hydar's inability to remember who requested him to call the representatives, his insistence that the per-2382 son was an employee, his decided lack of memory in matters of importance, makes it appear that he either was not telling the truth or has a very selective memory for facts."

for the reason that said portion of said Finding of Fact is immaterial to the issues in the matter.

3. Excepts to the 6th Finding of Fact, and the whole thereof, for the reason that said Finding is not supported by substantial evidence.

4. Excepts to that portion of the 7th Finding of Fact, which reads as follows:

"The workmen attending these meetings were paid for the time in attendance. Later, all had deductions made from their pay checks by the Corporation, after the matter had been called to its attention by the National Labor Relations Board."

for the reason that said portion of the 7th Finding of Fact is not supported by substantial evidence.

5. Excepts to that portion of the 8th Finding of Fact, which reads as follows:

"At least two of the company representatives were called into these meetings to explain the Wagner Act C *"

for the reason that said portion of said Finding is not supported by substantial evidence.

And further, excepts to that portion of the 8th Finding of Fact, which reads as follows:

"* * that the change in effective date from June 1 to May 1 was made to discourage the Amalgamated activities in the plant."

for the reason that said portion of the 8th Finding of Fact is not supported by substantial evidence.

And further, excepts to that portion of the 8th Finding of Fact, which reads as follows:

"* * and thus, placed the Independent Union in a very advantageous position in securing members."

2383 for the reason that said portion of said Finding is not supported by substantial evidence.

6. Excepts to that portion of the 9th Finding of Fact, which reads as follows:

"The attorney employed by the Independent Union was

suggested by Harold Falk and the appointment for the committee to see the attorney was made by Harold Falk." for the reason that said portion of said Finding is not supported by substantial evidence.

And further, excepts to that portion of the 9th Finding of Fact, which reads as follows:

"... it is an established fact that Falk suggested Mr. Burke as attorney, knowing that he had acted for other independent unions." for the reason that said portion of said Finding is not supported by substantial evidence.

And further, excepts to that portion of the 9th Finding of Fact, which reads as follows:

"Greget at a meeting of Falk employees on April 18, when asked where the committee had secured their attorney, stated that he had known the attorney for some time and failed to state that Falk had suggested the attorney. Greget's failure to advise the meeting that Falk had suggested the attorney resulted in a very heated argument at the meeting and may have been one of the contributing factors in abandoning the formal organization of an independent union at this meeting." for the reason that said portion of said Finding is immaterial to the issues in this matter.

7. Excepts to that portion of the 10th Finding of Fact, which reads as follows:

"No deductions were made in their pay checks for the time so spent until some while later, after the failure to make such deductions had been called to the attention of the respondent by an agent of the National Labor Relations Board." for the reason that said portion of said Finding is not supported by substantial evidence.

2384 8. Excepts to that portion of the 12th Finding of Fact, which reads as follows:

"... and without submitting any evidence to the respondent to show they represented a majority of the employees."

for the reason that said portion of said Finding is not supported by substantial evidence.

9. Excepts to the 13th Finding of Fact, and the whole thereof, for the reason that said Finding is immaterial to the issues in this matter.

10. Excepts to that portion of the 14th Finding of Fact, which reads as follows:

"The meeting adopted by-laws which had been prepared on the basis of the Articles of Incorporation drawn by an

attorney selected by the respondent's agent, the contents of which the members did not and could not pass upon." for the reason that said portion of said Finding is not supported by substantial evidence.

And further, excepts to that portion of the 14th Finding of Fact, which reads as follows:

"The Articles of Incorporation provide that the Independent Union of Falk Employees, as a corporation, shall have a president, vice-president, secretary and treasurer, who shall be elected by the 13 directors; that the Board of Directors shall act as a supreme governing body of the corporation and have the sole right to act as the representative of the members of the corporation in all negotiations with The Falk Corporation. Furthermore, the corporation shall be composed of employees of the respondent entitled to all rights, privileges, and benefits during the time the member is employed by the respondent."

for the reason that said portion of said Finding is immaterial to the issues in this matter.

11. Excepts to the 15th Finding of Fact, and the whole thereof, for the reason that said Finding is immaterial to the issues in this matter.

2385 And further, excepts to that portion of the 15th Finding of Fact, which reads as follows:

"It is not unlikely that this would occur as shown by the discharge of Anton Kinch, referred to in Section II (D) of this report, who was a member of the Works Council, and not acceptable to the agents of The Falk Corporation." for the reason that said portion of said Finding, in addition to being immaterial to the issues in this matter, is not supported by substantial evidence.

12. Excepts to the 16th Finding of Fact, and the whole thereof, for the reason that the same is not supported by substantial evidence, and is contrary to law.

13. Excepts to the 18th Finding of Fact, and the whole thereof, for the reason that the same is not supported by substantial evidence, and is contrary to law.

14. Excepts to that portion of the 25th Finding of Fact, which reads as follows:

"Such a direct statement of the respondent's position with respect to unions could have only one effect on employees whose jobs are subject to the respondent's control, that is, to discourage membership in unions."

for the reason that said portion of said Finding is not supported by substantial evidence.

15. Excepts to that portion of the 27th Finding of Fact, which reads as follows:

"The Amalgamated Association was at a very decided disadvantage with the attitude of Harold Falk against 'outside' unions being well-known among the employees." for the reason that said portion of said Finding is not supported by substantial evidence.

16. Excepts to that portion of the 32nd Finding of Fact, which reads as follows:

2386 "The discharge of Kinch is directly the result of the activities referred to herein."

for the reason that said portion of said Finding is not supported by substantial evidence, and for the further reason that it is not a finding predicated on what the substantial evidence is.

17. Excepts to that portion of the 33rd Finding of Fact, which reads as follows:

"... there was no showing that Kinch's advocacy of the plan or securing of signatures to the petitions resulted in any definite loss of time, or loss of production in the plant." for the reason that said portion of said Finding is not supported by substantial evidence.

18. Excepts to that portion of the 34th Finding of Fact, which reads as follows:

"... that Kinch was discharged because of being engaged in concerted activities with other employees for the purpose of collective bargaining and other mutual aid and protection." for the reason that said portion of said Finding is not supported by substantial evidence, and is contrary to law.

19. Excepts to the 36th Finding of Fact, and to the whole thereof, for the reason that said 36th Finding is not supported by substantial evidence, and is contrary to law.

20. Excepts to the 37th Finding of Fact, and to the whole thereof, for the reason that said 37th Finding is not supported by substantial evidence, and is contrary to law.

21. Excepts to the 1st Conclusion, and to the whole thereof, for the reason that the same is not supported by substantial evidence, and is contrary to law.

And further, specifically excepts to that portion of the 1st Conclusion, which reads as follows:

2387 "Respondent, The Falk Corporation, by discharging and refusing to employ Anton Kinch and thus discouraging concerted activities among its employees;" for the reason that said portion of said Conclusion is not supported by substantial evidence, and is contrary to law.

And further, specifically excepts to that portion of the 1st Conclusion, which reads as follows:

“ * and by dominating and interfering with the labor organization known as the Independent Union of Falk Employees;”

for the reason that said portion of said Conclusion is not supported by substantial evidence, and is contrary to law.

And further, specifically excepts to that portion of the 1st Conclusion, which reads as follows:

“and by sponsoring and contributing support to it;”

for the reason that said portion of said Conclusion is not supported by substantial evidence, and is contrary to law.

And further, specifically excepts to that portion of the 1st Conclusion, which reads as follows:

“ * and by interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, as set forth in the above Findings of fact, has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8, subdivision (1) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act.”

for the reason that said portion of said Conclusion is not supported by substantial evidence, and is contrary to law.

22. Excepts to the 2nd Conclusion, and to the whole thereof, for the reason that the same is not supported by substantial evidence, and is contrary to law.

23. Excepts to the 3rd Conclusion, and to the whole thereof, for the reason that the same is not supported by substantial evidence, and is contrary to law.

2388 24. Excepts to the 1st Recommendation, for the reason that an order of the National Labor Relations Board in substance and in form in accordance with such recommendation would be beyond its jurisdiction, and for the further reason that the same is not supported by substantial evidence, and is contrary to law.

25. Excepts to the 2nd Recommendation, for the reason that an order of the National Labor Relations Board in substance and in form in accordance with such recommendation would be beyond its jurisdiction, and for the further reason that the same is not supported by substantial evidence, and is contrary to law.

26. Excepts to the 3rd Recommendation, for the reason that an order of the National Labor Relations Board in substance and in form in accordance with such recommendation would be beyond its jurisdiction, and for the further reason

that the same is not supported by substantial evidence, and is contrary to law.

27. Excepts to subdivision (a) of the 4th Recommendation, for the reason that an order of the National Labor Relations Board incorporating such affirmative action on the part of the respondent would be beyond its jurisdiction, and for the further reason that the same is not supported by substantial evidence, and is contrary to law, and contrary to the Fifth Amendment to the Constitution of the United States.

28. Excepts to subdivision (b) of the 4th Recommendation, for the reason that an order of the National Labor Relations Board incorporating such affirmative action on the part of the respondent would be beyond its jurisdiction, and for the further reason that the same is not supported by substantial evidence, and is contrary to law.

2389 29. Excepts to subdivision (c) of the 4th Recommendation, for the reason that an order of the National Labor Relations Board incorporating such affirmative action on the part of the respondent would be beyond its jurisdiction, and for the further reason that the same is not supported by substantial evidence, and is contrary to law.

30. Excepts to subdivision (d) of the 4th Recommendation, for the reason that an order of the National Labor Relations Board incorporating such affirmative action on the part of the respondent would be beyond its jurisdiction, and for the further reason that the same is not supported by substantial evidence, and is contrary to law.

31. And further, excepts to subdivisions (a), (b), (c) and (d) of the 4th Recommendation, for the reason that under the facts and circumstances as established by the evidence, such an order incorporating the form and substance of said subdivisions of the 4th Recommendation, and each of them, would deprive the respondent of liberty and property without due process of law, contrary to the Fifth Amendment to the Constitution of the United States.

32. And further, specifically excepts to that portion of subdivision (d) of said 4th Recommendation, which reads as follows:

"and (2) that the respondent's employees are free to join or assist the Amalgamated Association of Iron, Steel & Tin Workers of North America, Lodge 1528, and the International Union of Operating Engineers, Local 311, or any other labor organization of its employees and that their status as employees of the respondent will not be affected by such action on their part;"

for the reason that an order, incorporating in form and substance said Recommendation, would indicate to the respondent's employees a favored position of the Amalgamated Association of Iron, Steel & Tin Workers of North America, Lodge 1528, and the International Union of Operating Engineers, Local 311, on account of the form thereof; that the proper form, if such an order is made by the National Labor Relations Board, should be to the effect that the respondent's employees are free to join or assist any labor organization of its employees, and that their status as employees of the respondent will not be affected by such action on their part.

Lamfrom, Tighe, Engelhard & Peck,
Attorneys for Respondent.

Dated: November 27, 1937.

2392 BEFORE THE NATIONAL LABOR RELATIONS BOARD.
• • (Caption—XII-C-57) • •

**EXCEPTIONS OF THE INDEPENDENT UNION OF
FALK EMPLOYEES TO THE INTERMEDIATE RE-
PORT OF JAMES C. BATTEN, TRIAL EXAMINER,
DATED, NOVEMBER 2, 1937.**

Now comes the Independent Union of Falk Employees, by Alexander, Burke & Clark, its attorneys, and excepts to the following Findings, Conclusions and Recommendations, found in the Intermediate Report of James C. Batten, Trial Examiner, dated November 2, 1937:

1. Excepts to that portion of Finding 5 of Section II, which reads as follows:

"The Independent Union of Falk Employees started organizing on April 12, 1937,"
for the reason that such Finding is contrary to the evidence.

2. Excepts to Finding 6 of Section II, for the reason that there is no evidence to support said Finding.

3. Excepts to that portion of Finding 9 of Section II, which reads as follows:

"The attorney employed by the Independent Union was suggested by Harold Falk and the appointment for the committee to see the attorney was made by Harold Falk."
for the reason that said Finding is contrary to the evidence.

2393 4. Excepts to that portion of Finding 9 of Section II, which reads as follows:

"* * * it is an established fact that Falk suggested Mr. Burke as attorney, knowing that he had acted for other independent unions."

for the reason that said Finding is contrary to the evidence.

5. Further excepts to that portion of Finding 9 of Section II, which reads as follows:

"* * * Greget at a meeting of Falk employees on April 18, when asked where the committee had secured their attorney, stated that he had known the attorney for some time and failed to state that Falk had suggested the attorney. Greget's failure to advise the meeting that Falk had suggested the attorney resulted in a very heated argument at the meeting and may have been one of the contributing factors in abandoning the formal organization of an independent union at this meeting."

for the reason that said portion of said Finding is contrary to the evidence.

6. Excepts to that portion of Finding 11 of Section II, which reads as follows:

"* * * The meeting adjourned without taking any organizational action and the general feeling was that the organization should run along as an association."

for the reason that there is no evidence to substantiate such Finding.

7. Excepts to that portion of Finding 12 of Section II, which reads as follows:

"* * * met with Falk and without submitting any evidence to the respondent to show they represented a majority of the employees, secured recognition for the Independent Union,"

for the reason that there is no evidence to substantiate such a Finding.

8. Excepts to that portion of Finding 13 of Section II, which reads as follows:

2394 "* * * The carelessness with which directors were elected is very well disclosed by the fact that a subforeman was elected by his marking the ballots of the workmen in his department, many of whom could not read or write."

and to that portion of Finding 13 of Section II, which reads as follows:

"* * * The election of 13 directors by the employees of the 13 different departments of the plant, at a general meeting of all employees, further discloses the utter disregard of the first principle of self-organization, freedom of choice in the selection of representatives."

for the reason that he should have found that each Department selected its own representative, to be elected by the entire group.

9. Excepts to that Portion of Finding 14 of Section II, which reads as follows:

"The meeting adopted by-laws which had been prepared on the basis of the Articles of Incorporation drawn by an attorney selected by the respondent's agent," for the reason that there is no evidence to substantiate this portion of the Finding.

10. Excepts to Finding 16 of Section II, for the reason that there is no evidence to substantiate such Finding.

11. Excepts to Finding 18 of Section II, for the reason that said Finding is not substantiated by evidence, and is contrary to law.

12. Excepts to that portion of Finding 23 of Section II, which reads as follows:

"For the reasons stated herein the employees connected with the production department, except operators of steam-driven equipment, should be considered a separate unit from the so-called office employees which includes draftsmen, employees in the general office, and employees in the payroll department."

for the reason that said Finding is not substantiated by evidence, and is contrary to law.

2395 13. Excepts to that particular portion of Conclusion 1 of the Conclusions and Recommendations, which reads as follows:

"* * * by dominating and interfering with the labor organization known as the Independent Union of Falk Employees; and by sponsoring and contributing support to it;" for the reason that said Conclusion is not substantiated by evidence, and is contrary to law.

14. Excepts to Conclusion 2 of the Conclusions and Recommendations, for the reason that said Conclusion is not substantiated by evidence, and is contrary to law.

15. Excepts to Recommendation 4 (c) of the Conclusions and Recommendations, which reads as follows:

"Respondent, The Falk Corporation, withdraw all recognition from the Independent Union of Falk Employees as representatives of its employees for the purpose of dealing with it concerning grievances, labor disputes, wages, rates of pay,

Notice of Hearing.

hours of employment or conditions of work, and disestablish all relations with such organization;" for the reason that said Recommendation is contrary to law.

Alexander, Burke & Clark,
*Attorneys for Independent Union
of Falk Employees.*

Dated: November 29th, 1937.

2397 NATIONAL LABOR RELATIONS BOARD,
Washington, D. C.

In the Matter of
The Falk Corporation,
and
Amalgamated Association of Iron,
Steel & Tin Workers of North
America, Lodge 1528. } Case No.
C-293.

NOTICE OF HEARING.

Please Take Notice that pursuant to authority vested in the National Labor Relations Board under an Act of Congress (49 Stat. 449) a hearing will be held before the National Labor Relations Board on Friday, February, 25, 1938 at 12 o'clock noon in Room 326, Shoreham Building, Fifteenth and H. Streets, N. W. Washington, D. C., for the purpose of oral argument in the above entitled matter. Argument will be limited to one hour.

You may appear and be heard if you so desire.

Dated, Washington, D. C., February 7, 1938.

Nathan Witt,
Nathan Witt,
Secretary.

(Seal)

2398

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD.

In the Matter of

The Falk Corporation,

and

Amalgamated Association of Iron,
Steel & Tin Workers of North
America, Lodge 1528.

Case No.

C-293.

Room 442,
Shoreham Building,
Washington, D. C.

A hearing was held in the above matter for the purpose of
Oral Argument at the above place on February 25, 1938, at
12 Noon Before:

12 Noon

Before:

J. Warren Madden, Chairman.

Edwin S. Smith, Member.

Donald Wakefield Smith, Member.

Appearances:

Daniel J. Harrington, of Counsel to the Board.

Joseph A. Padway, International Union of Operating
Engineers, Local 311, Milwaukee, Wisconsin.Giles F. Clark, Independent Union of Falk Employees
By Alexander, Burke & Clark, 110 E. Wisconsin, Mil-
waukee, Wisconsin.Leon B. Lamfrom, 208 East Wisconsin Avenue, Mil-
waukee, Wisconsin.

2399

UNITED STATES OF AMERICA.

BEFORE THE NATIONAL LABOR RELATIONS BOARD.

In the matter of The Falk Corporation and Amalgamated
Association of Iron, Steel and Tin Workers of North Amer-
ica, Lodge 1528.

Cases Nos. R-278 and C-293.—Decided April 18, 1938.

Machinery Manufacturing Industry—Interference, Re-
straint or Coercion: expressed opposition to labor organi-
zation—Company-Dominated Union; domination and inter-

Filed
Apr. 18,
1938.

ference with formation and administration; support of—Discrimination: discharge: settlement effected; charges of, dismissed—Investigation of Representatives: controversy concerning representation of employees: controversy concerning appropriate unit—Unit Appropriate for Collective Bargaining: where other considerations determinative of appropriate unit are evenly balanced, decisive factor is the desire and choice of employees involved; determination of, dependent upon election results—Collective Bargaining: refusal to recognize representatives: charges of, dismissed—Election Ordered: to be held upon further order of Board, after compliance with this order.

Mr. Robert R. Rissman and Mr. S. G. Lippman, for the Board.

Lamfrom, Tighe, Engelhard & Peck, by Mr. Leon B. Lamfrom and Mr. A. J. Engelhard, of Milwaukee, Wis., for the respondent.

Mr. A. G. Goldberg, of Milwaukee, Wis., for the Operating Engineers.

Alexander, Burke & Clark, by Mr. Giles F. Clark, of Milwaukee, Wis., for the Independent.

Mr. Daniel J. Harrington, of counsel to the Board.

DECISION

ORDER

and

DIRECTION OF ELECTION

Statement of the Case.

On May 24, 1937, the Steel Workers Organizing Committee, herein called the S. W. O. C., led a charge, in behalf of the Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge 1528, herein called the Amalgamated, with the Regional Director for the Twelfth Region (Milwaukee, Wisconsin) and on August 2, 1937, filed an amended charge alleging that The Falk Corporation, Milwaukee, Wisconsin, herein called the respondent, had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On August 4, 1937, the National Labor Relations Board, herein called the Board, by the Regional Director for the Twelfth Region, issued its complaint against the respondent, alleging that the respondent had en-

gaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1), (2), (3), and (5) and Section 2 (6) and (7) of the Act. The complaint and accompanying notice of hearing were duly served upon the parties.

In respect to the unfair labor practices the complaint alleged in substance: (1) that all the employees of the respondent at its Milwaukee plant, except supervisory employees, draftsmen, employees in the general office, and employees of the pay-roll department, constituted an appropriate unit for the purpose of collective bargaining; (2) that a majority of the employees in such unit had designated the Amalgamated as its representative for the purpose of collective bargaining with the respondent; (3) that the respondent at various times, when requested by the Amalgamated, refused to bargain with the Amalgamated as the exclusive bargaining agency for all the employees in such unit; (4) that the respondent, on or about December 31, 1936, discharged Anton Kinch for engaging in concerted activities with other employees for their mutual aid and protection; (5) that the respondent refuses to reinstate Anton Kinch for the same reason; (6) that the respondent dominated, fostered, encouraged, and interfered with the formation, enlistment of membership, and administration of a labor organization known as the Independent Union of Falk Employees and has contributed and is now contributing financial and other support thereto; (7) that the respondent, by the foregoing acts had interfered with, restrained, coerced, and is interfering with, restraining, and coercing its employees in the exercise of their rights guaranteed by Section 7 of the Act.

S. W. O. C. filed a petition, dated August 2, 1937, requesting an investigation and certification of representatives, pursuant to Section 9, (c) of the Act. On August 6, 1937, the Board, acting pursuant to Article III, Section 3, of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice.

On August 12, 1937, the respondent filed an answer to the complaint, in which it denied that it had engaged in the alleged unfair labor practices and requested that the complaint be dismissed, but admitted certain allegations as to the nature of its business.

24) The Independent Union of Falk Employees, herein called the Independent, filed a petition to intervene on

August 13, 1937, and on the same date, International Union of Operating Engineers, Local No. 311, herein called the Operating Engineers, also filed a petition to intervene, charging therein additional violations of Section 8 (1), (2), (3), and (5) of the Act by the respondent.

On August 14, 1937, the Board, acting pursuant to Article III, Section 10 (c) (2) of the Rules and Regulations—Series 1, as amended, ordered that the two cases be consolidated for the purpose of hearing and that James C. Batten act as Trial Examiner.

Pursuant to notice, a hearing was held in Milwaukee, Wisconsin, on August 16, 17, 18, 19, 20, 23, 24, and 25, 1937, before James C. Batten, the Trial Examiner duly designated by the Board. At the hearing both the Independent and the Operating Engineers orally renewed their petitions for intervention and both petitions were granted. The Operating Engineers, however, was required by the Trial Examiner to serve on respondent's counsel an amended petition containing a more specific statement of the charges included in its original petition to intervene, and the respondent filed an answer thereto. At the conclusion of the hearing the respondent moved that the amended petition for intervention, filed by the Operating Engineers, be dismissed. The motion was denied by the Trial Examiner.

The Trial Examiner erred in allowing the Operating Engineers to intervene on the basis of the additional charges included in its petition and amended petition and in denying the respondent's motion to dismiss the amended petition. Those rulings are hereby reversed. Since the Board's complaint was not amended to include the additional charges, they were not in issue. Evidence, which was introduced under the charges in the petition as amended, is admissible only in so far as it is within the allegations of the complaint and we have considered such evidence only to that extent.

The Board, the respondent, the Operating Engineers, and the Independent were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties.

At the conclusion of the Board's case, counsel for the Board moved to amend the complaint to conform with the proof thus far adduced, which motion was granted. Counsel for the respondent moved that both the petition and the complaint be dismissed and that each charge of the complaint be dismissed.

The Trial Examiner denied the motions for dismissal of the petition and of the complaint and reserved ruling on the motions to dismiss the separate charges of the complaint. At the conclusion of the hearing, the respondent renewed its motion to dismiss the petition and complaint. The Independent moved that the portion of the complaint alleging that the respondent dominated, fostered, encouraged, and interfered with the formation, enlistment of membership, and administration of the Independent and contributed financial and other support to it be dismissed. These motions were denied. Counsel for the Board moved that the complaint be amended to conform with the proof. The motion was granted, but limited in its application to the correction of minor variances between the proof and the allegations of the complaint.

The Board has reviewed the rulings of the Trial Examiner on motions and objections to the admission of evidence and finds that no prejudicial errors were committed. The rulings are hereby affirmed, except the rulings on the Operating Engineers' petition for intervention as hereinabove stated.

In his Intermediate Report, filed November 2, 1937, the Trial Examiner found that the respondent had engaged in unfair labor practices affecting commerce, within the meaning of Section 8 (1), (2), and (3)¹ and Section 2 (6) and (7) of the Act, and further found that the respondent had not committed unfair labor practices within the meaning of Section 8 (5) of the Act. Exceptions to the Intermediate Report were filed by the respondent on November 27, 1937, and by the Independent on November 29, 1937. On February 25, 1938, the respondent and the Independent presented oral arguments before the Board in support of their exceptions, while the Operating Engineers presented arguments in support of the findings of the Trial Examiner. Thereafter, briefs were submitted by the respondent and by the Independent, which have been considered by the Board. The Board has fully considered the exceptions to the findings of the Intermediate Report and finds them without merit.

Upon the entire record in the case the Board makes the following:

¹ Subsequent to the filing of the Trial Examiner's Intermediate Report, a settlement agreeable to all parties was effected in respect to the discharge of Anton Kinch. The settlement thus effected was approved by the Board on January 27, 1938. We will, therefore, dismiss the complaint in so far as it alleges that the respondent violated Section 8 (3) of the Act through the discharge of Kinch.

Findings of Fact.

I. The Business of the Respondent.

The Falk Corporation, the respondent herein, is a Wisconsin corporation, with its main office and plant in Milwaukee, Wisconsin. It is engaged in the design, production, sale, and distribution of steel castings, helical gears, speed reducers, speed increasers, motoreducers, marine drives, rolling drives and pinion stands, flexible couplings, contract machine work, and various other products.

2401 In the operation of its plant the respondent uses large quantities of pig iron and scrap steel, bar steel, coal, gray iron castings, silica sand and fireclay, nuts, bolts, screws, rivets, electric and gasoline motors, lumber, copper, tin, sheet metal, chemicals, and various other raw materials. Of these raw materials approximately 65 per cent originate outside the State of Wisconsin. Approximately 75 per cent of the respondent's sales are to points outside the State of Wisconsin.

II. The Unions.

Steel Workers Organizing Committee is a labor organization authorized to act on behalf of Amalgamated Association of Iron, Steel and Tin Workers of North America for collective bargaining purposes.

Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge 1528, is a labor organization affiliated with the Committee for Industrial Organization, herein called the C. I. O., through the Steel Workers Organizing Committee. It admits to membership all production employees in the respondent's plant, exclusive of supervisory employees, draftsmen, employees in the general office, and employees in the pay-roll department.

International Union of Operating Engineers, Local 311, is a labor organization affiliated with the American Federation of Labor, herein called the A. F. of L. admitting to its membership the powerhouse employees and steam-driven locomotive crane operators of the respondent.

Independent Union of Falk Employees is an unaffiliated labor organization, which admits to membership all employees of the respondent, excluding officials, superintendents, assistant superintendents, foremen, and assistant foremen.

✓ III. The Unfair Labor Practices.

A. The backgrounds of the unfair labor practices.

Prior to 1933, there was no form of employee representation in the respondent's plan. In the summer of 1933, after the enactment of the National Industrial Recovery Act, a Works Council was set up at the suggestion of Harold Falk, vice president and works manager of the respondent. Falk told the employees that it would be inadvisable to choose an outside labor organization and that the respondent would not allow a closed shop. At an election held subsequently ballots cast for outside representatives were not counted. The Works Council was composed of Employee and Management Representatives, the chairman and secretary being appointed by the management. Some time after its formation, the Employee Representatives, at their request, were allowed to meet alone to decide what they wished to discuss at the regular meeting with the Management Representatives. Employee Representatives were compensated at their respective hourly rates for time spent at meetings of the Works Council.

B. The formation of the Independent.

In April 1937, it seems to have been generally agreed between the Works Council and the respondent that the Works Council would have to be disestablished because of the provisions prohibiting company-dominated labor organizations in the Act and also in the so-called Severson Bill, then pending in the Wisconsin Legislature. On April 8, 1937, the Works Council held its last meeting at which meeting Harold Falk was present. There is testimony that he told the employees that they could form an independent union and that they could meet on the respondent's property to make arrangements for forming it, but that they would have to meet off the respondent's property after it was formed. Although Falk denied that he had made these statements, he admitted that at that meeting he had discussed the situation in another company's plant where there was trouble between the A. F. of L. and the C. I. O. He also admitted that at that meeting he had told the men that a raise which had been agreed on between the respondent and the Works Council to become effective June 1, 1937, would stand as long as the Works Council stood, but that, if another group came into being, the arrangements would be cancelled and new negotiations would have to be entered into with the new group. In view of the respondent's

hostility to outside unions, its domination of the Works Council, and Falk's admitted statements concerning the C. I. O. and A. F. of L. activities in another plant in conjunction with his discussion of the wage increase, his denial of his express approval of a prospective inside union and acquiescence in such a union's preliminary use of company facilities is not convincing.

On April 12, 13, and 14, 1937, a group of past and present Employee Representatives on the Works Council held four meetings in the basement of the plant hospital during working hours and discussed the formation of an inside union. Hydar, the personnel manager of the respondent, was instrumental in notifying employees of the meeting held on April 12. He did not remember who had asked him to notify these employees, but was certain that the person who had made the request was an employee.

Harold Falk was called into the meeting on April 12. He testified that he gave his impressions of the Wagner Act to the men as "near as he could." At this meeting Falk 2402 agreed to advance the date of the wage increase from

June 1, 1937, to May 1, 1937, if it would make the men "feel any better" and to show the respondent's good faith. There is evidence that this action was suggested and taken as a means of keeping the C. I. O. out of the plant. Although the evidence is conflicting on this point, Falk's willingness, under the circumstances discussed, to advance the date of the wage increase, indicates that such a suggestion was made and acted upon to influence the men in their choice of a labor organization.

On April 13, the men again sent for Harold Falk. He was not in the plant, but his son, Richard, addressed the meeting as did Connell, a vice president of the respondent. Connell told the men that his interpretation of the Wagner Act was that the respondent could not help the men either financially or in an advisory capacity. The meeting was then adjourned. After the meeting, some of the men met Harold Falk in the plant. Falk told the men that it was all right to go ahead with the inside union. There is also evidence that he told the men that they would have to incorporate as quickly as possible because the C. I. O. was working in the plant, which statement was denied by Falk. At any rate, the men held another meeting at which it was decided to secure the services of an attorney. A committee was sent to Harold Falk for suggestions as to an attorney. Falk named two or three attorneys where-

upon Greget, one of the committee, said that Burke, one of the attorneys suggested by Falk, would be satisfactory. Falk then made an appointment with Burke for the men. Landry, president of the Amalgamated and one of those present at the meetings, claims that he objected strenuously to having Harold Falk suggest the attorney and that after his objection the men began to make up a story to tell in case anybody asked who suggested the attorney. Greget did not remember any protest being made by Landry, nor did he recall any discussion among the men to the effect that they would have to make up a story to tell if anyone asked who suggested the attorney.

A committee was appointed on April 13, 1937, to confer with Burke relative to the organization of an inside union. Burke told the committee at a conference on April 14 that if the inside union became established he would charge a fee, but that otherwise there would be no fee. Three members of the committee went to Burke's office the next day, but did not sign incorporation papers, which he had drawn up for the inside union, having previously decided that they would first organize as an association and incorporate later.

On April 18, 1937, the Independent held an organization meeting in a hall, which was not on the respondent's property. When asked who suggested the attorney, Greget answered that he had suggested him, having heard of him through an automobile accident in which he had been involved. Greget's failure to disclose the fact that Falk had suggested the attorney seems to confirm Landry's testimony and indicates that the organizers of the Independent both realized the company domination and influence involved in this incident, and feared that its disclosure would have a disastrous effect on their organizational activities. Nothing definite as to the form of organization that the inside union was to adopt was decided at the April 18 meeting. One of those present testified that they decided to "run along as an association and then later on incorporate." This amounted to a ratification of the decision on incorporation made by the committee when it had conferred with Burke.

When the meeting had been adjourned, three employees, who had attended it, discussed incorporation of the Independent with the attorney. They were joined by another employee, who said that, if he could get two other signers, he would go to the attorney's office next day and sign articles of incorporation. One of those present admitted, at the hearing, that the reason the Independent is a corporation today is because

of "a little intimate talk" between three employees and the attorney.

The next day, April 19, 1937, the three employees, who had attended the meeting on the previous day, went to Burke's office and signed the articles of incorporation, although they had not been given authority to do so. The articles of incorporation were immediately taken to the State Capitol at Madison, Wisconsin, and filed. On April 20, 1937, they were filed in the Register of Deeds Office at Milwaukee. On the same day the three incorporators notified the respondent by letter that the Independent was incorporated, that approximately 400 employees were members of it, and that a time and place was requested to discuss collective bargaining.

The three incorporators met with the respondent on April 23, 1937, and, on their statement that they represented a majority of the employees, the respondent recognized the Independent as bargaining agency for all the employees. No proof that it represented a majority was offered and none was required by the respondent.

During March, April, and May 1937, both the Amalgamated and the Independent conducted an intensive campaign for members, at times doing so during working hours. Some of the foremen, in discussions with the men, expressed their hostility to the C. I. O. and told them that an inside union would be better for them. At the hearing, the foremen testified that the management had ordered them not to express opinions on the subject, but admitted that they had expressed their opinion in "friendly" talks with the men.

Prior to and coincident with the active organization efforts of the Amalgamated and the Independent, the Operating Engineers had undertaken to organize a smaller group of the respondent's employees.

2403 The Operating Engineers began to organize the powerhouse employees of the respondent in February 1937, and by April had succeeded in obtaining application cards, signed by 14 of the 17 employees in the powerhouse. On or about April 12, 1937, Kingsland, the business representative of the Operating Engineers, conferred with Harold Falk and asked recognition of the Operating Engineers as bargaining agent for these employees. Falk replied that he wanted to know how the men in the powerhouse felt about it first. After the conference he interviewed the men individually to ascertain how many desired to be represented by the Operating Engineers. At the hearing Falk testified that he

may have expressed an opinion unfavorable to the Operating Engineers, when talking to the men at that time.

The Operating Engineers then sent post cards to the powerhouse employees stating that the conference between Falk and Kingsland had been favorable, that only working hours remained to be settled, and that a meeting for these employees was to be held on April 18, 1937. When Falk learned of these post cards, he sent to each employee in the powerhouse a letter stating: "(1) we are not in favor of a union (2) we will not agree to recognize Mr. Kingsland as bargaining agent for you unless you as a group signify your desire to have us do so (3) we are ready at all times to meet with you as a group or individually to discuss your problems." On April 28, 1937, counsel for the Operating Engineers accused Falk of coercing these employees. After this accusation, Falk called the powerhouse employees to his office individually to find out whether or not they had been intimidated by his former conversation with them. Although several of the powerhouse employees assured Falk in these individual conversations and later testified at the hearing that they were not intimidated by the conversations or letter, it is significant that no one appeared at the next meeting of the Operating Engineers held on April 18, 1937. Letters of withdrawal, which were prepared in the office of the attorneys for the Independent, were subsequently received about May 6, 1937, by the Operating Engineers from five of the engineers.

The sequence of events from the disestablishment of the admittedly company-dominated Works Council to the recognition of the Independent by the respondent compels the conclusion that the formation and continued functioning of the Independent were directly attributable to the above-described activities of the respondent. The respondent's antipathy to outside unions was amply demonstrated to the employees. At the last meeting of the Works Council, Falk's remarks respecting the establishment of an inside union disclosed to the employees the respondent's preference for such a union. This preference was further emphasized by the foremen's expressions of hostility to the C. I. O. and their advice that an inside union would be better for the employees. These opinions, expressed by persons in supervisory capacities, were intended to and did restrict the employees in their choice of a labor organization. The respondent translated this verbal preference into action. It permitted the meetings for the formation of the Independent to be held on its property during working hours. Hydar notified the employees to attend

the first of these meetings, which were addressed by Harold Falk and Connell, two of the respondent's principal officials, and by Falk's son, Richard. Harold Falk promised to advance the date of the wage increase as an inducement to the employees to form and join the Independent and gave them his sanction. The attorney, retained by the employees, was selected from among those suggested by Harold Falk and the appointment with him was arranged by Falk. The effectiveness of the respondent's interference with the administration of the Independent is further evidenced by the employees' abrupt decision to incorporate although they had previously decided to postpone such action. With the form of the Independent perfected in accordance with its desires, the respondent recognized it as the bargaining agent for all its employees on the mere statement of its incorporators that it represented a majority of such employees, without requiring any other proof of a majority. This hasty recognition of the Independent enabled the respondent to utilize it within 2 weeks as a pretext for denying collective bargaining to the Amalgamated.

We find that, by the above-stated acts, the respondent dominated and interfered with the formation and administration of the Independent and contributed support to it and thereby interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed in Section 7 of the Act.

C. The refusal to bargain collectively.

1. The appropriate unit.

The complaint alleged that all employees in the respondent's Milwaukee plant, except supervisory employees, draftsmen, employees in the general office, and employees in the pay-roll department, constituted an appropriate unit. In support of this allegation the Amalgamated pointed out at the hearing that the problems and interests of the production employees are different from those of the draftsmen and clerical employees. The basis of pay is likewise different as are the working hours. These differences are of such a nature as to preclude effective bargaining by one group for the other.

The Operating Engineers contends that the powerhouse employees of the respondent, including operators of steam-driven locomotive cranes, constitutes an appropriate unit. These employees are required by the City of Milwaukee to have a license in order to perform their duties.

Other employees cannot take their positions unless they are licensed engineers. The powerhouse is a separate building. The powerhouse employees are paid on a monthly salary basis.

In view of the facts described above, it appears that the powerhouse employees can be considered either as a separate unit, as claimed by the Operating Engineers, or as part of the large unit composed of production employees, as claimed by the Amalgamated. Falk testified that, for purposes of collective bargaining, the interests of the powerhouse employees could be effectively served either by representation with all the employees in the plant or by separate representation for these employees.

The Amalgamated and the Operating Engineers recognized this situation as is evidenced by the fact that at the hearing they entered into a stipulation, by which they agreed that, if the Board should direct an election, the employees in the power plant and the crane operators would vote separately to determine whether they desired to be represented by the Amalgamated or the Operating Engineers for the purpose of collective bargaining. This stipulation was to be effective only if, in such an election, the Independent were excluded from the ballot and only the names of the Amalgamated and the Operating Engineers appeared.

In such a case where the considerations are so evenly balanced, the determining factor is the desire of the men themselves.² On this point the record affords no help. There has been a swing toward the Operating Engineers on the part of the powerhouse employees and then away from it. We shall, therefore, order an election on the basis of the stipulation between the Amalgamated and the Operating Engineers. Upon the result of this election will depend the determination of the appropriate unit or units for purposes of collective bargaining. If the powerhouse employees choose the Operating Engineers, they will constitute a single appropriate unit and the other production employees will constitute another appropriate unit. Otherwise all the production workers, including the powerhouse employees, will constitute a single appropriate unit.

2. Representation in the unit claimed to be appropriate.

The financial secretary of the Amalgamated testified at the hearing that there were between 585 and 615 applications to

² See Matter of Globe Machine and Stamping Company, 3 N. L. R. B., No. 25.

membership in the Amalgamated around May 5, 1937, which was the date on which the Amalgamated requested collective bargaining from the respondent. He later testified, however, that the Amalgamated had about 677 application cards on May 5, 1937. The Amalgamated did not produce any records at the hearing to prove that it represented a majority of the employees, although the respondent demanded that the financial secretary produce his membership records. The minutes of the first meeting of the incorporators of the Independent, held on April 24, 1937, disclose that there were on that date 693 applications to membership in the Independent, while the minutes of a meeting on June 5, 1937, contain a statement by the secretary that there were 800 or more members. Figures submitted by the supervisor of the respondent's cost and pay-roll department, taken from the pay roll as of May 5, 1937, show that there were 1,316 employees, exclusive of miscellaneous employees, office and pay-roll employees, and drafting and engineering employees.

Since there was no clear showing that the Amalgamated represented a majority of the employees within an appropriate unit at the time it sought to bargain with the respondent, there was no violation of Section 8 (5) of the Act and the allegations of the complaint to that effect will, accordingly, be dismissed.

IV. The Question Concerning Representation.

It is apparent from the foregoing that a dispute exists concerning the appropriate unit or units and the representation of employees within such unit or units. Both the Amalgamated and the Operating Engineers have advanced conflicting claims.

We find that a question has arisen concerning representation of employees of the respondent.

V. The Effect of the Unfair Labor Practices and the Question Concerning Representation Upon Commerce.

We find that the activities of the respondent set forth in Section III above, and the question concerning representation which has arisen, occurring in connection with the operations of the respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

The Remedy.

We have found that the respondent dominated and interfered with the formation and administration of the Independent and has contributed support to it. Since its inception, and especially since the question concerning the 2405 representation of the respondent's employees has arisen, the respondent has used the Independent as a convenient weapon to prevent the exercise of its employees' rights to self-organization and collective bargaining. The respondent, in order to remedy its unlawful conduct, must withdraw all recognition from the Independent and completely disestablish it as a collective bargaining agency.

We have found that there is a question affecting commerce concerning the representation of the respondent's employees. We shall, therefore, order an election to be held among the employees of the respondent, who were in its employ during the pay-roll period immediately preceding our Direction of Election in order to determine the appropriate bargaining unit or units and the representation of employees within such unit or units. We shall direct that such election be held upon our further order after we are satisfied that the effects of the respondent's unfair labor practices have been dissipated by compliance with this order. In such election we shall make no provision for the designation of the Independent on the ballot.

Conclusions of Law.

1. Steel Workers Organizing Committee; Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge 1528; International Union of Operating Engineers, Local 311; and Independent Union of Falk Employees are labor organizations within the meaning of Section 2 (5) of the Act.

2. By interfering with, restraining, and coercing its employees in the exercise of their right to self-organization; to form, join, or assist a labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining and other mutual aid and protection as guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

3. By dominating and interfering with the formation and

administration of the Independent and by contributing support to it, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (2), of the Act.

4. The unfair labor practices referred to in paragraphs 2 and 3 above, constitute unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

5. A question affecting commerce has arisen concerning the representation of employees of The Falk Corporation, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

ORDER.

Upon the basis of the foregoing findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, The Falk Corporation, and its officers, agents, successors, and assigns shall:

1. Cease and desist:

(a) From dominating or interfering with the formation or administration of the Independent Union of Falk Employees, or any other labor organization of its employees, and from contributing support to the Independent Union of Falk Employees or to any other labor organization of its employees;

(b) From in any other manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Withdraw all recognition from the Independent Union of Falk Employees as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, and other conditions of employment, and completely disestablish the Independent Union of Falk Employees as such representative;

(b) Immediately post notices in conspicuous places

throughout its Milwaukee plant and maintain such notices for a period of thirty (30) consecutive days stating (1) that the respondent will cease and desist in the manner aforesaid, and (2) that it has withdrawn all recognition from the Independent Union of Falk Employees as the representative of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, and other conditions of employment, and that it has completely disestablished said organization as such representative;

(c) Notify the Regional Director for the Twelfth Region in writing within ten (10) days from the date of this Order what steps it has taken to comply herewith.

3. The complaint is hereby dismissed (1) in so far as it alleges that the respondent committed unfair labor practices within the meaning of Section 8 (3) of the Act in dis-2406 charging Anton Kinch, and (2) in so far as it alleges that the respondent has engaged in an unfair labor practice within the meaning of Section 8 (5) of the Act.

DIRECTION OF ELECTION.

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, and pursuant to Article III, Section 8, of National Labor Relations Board Rules and Regulations—Series 1, as amended, it is hereby

Directed that, as part of the investigation authorized by the Board to ascertain representatives for the purpose of collective bargaining with The Falk Corporation, Milwaukee, Wisconsin, an election by secret ballot shall be conducted within such time as we may hereafter direct, under the direction and supervision of the Regional Director for the Twelfth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Section 9, of said Rules and Regulations (1) among the employees of said Company, exclusive of supervisory employees, draftsmen, employees in the general office, employees in the pay-roll department, powerhouse employees, and steam-driven locomotive crane operators, who were in the employ of the Company during the pay-roll period immediately preceding this Direction of Election, excluding those who since have voluntarily quit or have been discharged for cause, to determine whether or not they desire to be represented by Amalgamated Asso-

ciation of Iron, Steel and Tin Workers of North America, Lodge 1528, affiliated with the Committee for Industrial Organization, for the purposes of collective bargaining, (2) among the powerhouse employees and steam-driven locomotive crane operators of said Company, who were in the employ of the Company during the pay-roll period immediately preceding this Direction of Election, to determine whether they desire to be represented by Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge 1528, affiliated with the Committee for Industrial Organization, or by International Union of Operating Engineers, Local 311, affiliated with the American Federation of Labor, for the purposes of collective bargaining, or by neither.

2411 In the Matter of
The Falk Corporation
and
Amalgamated Association of Iron,
Steel and Tin Workers of North
America. Lodge 1528.

} Case No. R-278 and
C-293.

(Stamped) File in Formal File. National Labor Relations Board Docketed Apr-18 1938 H.

AFFIDAVIT AS TO SERVICE.

District of }
Columbia, } ss:

I, Joseph Zambuto, being first duly sworn, on oath saith that I am one of the employees of the National Labor Relations Board, in the office of said Board in Washington, D. C.; that on the 18th day of April, 1938, I mailed postpaid, bearing Government frank, by registered mail, a copy of the Decision, Order, and Direction of Election to the following named persons, addressed to them at the following addresses:

Mr. Meyer Adelman, Field Director
Steel Workers Organizing Com.
3026 Plankinton Arcade
Milwaukee, Wisconsin
Messrs. Lamfrom, Tighe, Engelhard and Peck
Att: Mr. Leon B. Lamfrom
208 East Wisconsin Av.
Milwaukee, Wisconsin
Messrs. Alexander, Burke, and Clark
Att: Mr. Giles F. Clark
110 East Wisconsin Av.
Milwaukee, Wisconsin
Mr. A. G. Goldberg
511 Warner Bldg.
Milwaukee, Wisconsin

Joseph Zambuto.

Subscribed and sworn to before me this 18th day of April, 1938.

(Seal) Harold G. Wilson,
Notary Public, District of Columbia.

My commission expires May 15, 1941.

1184

Post Office Receipt.

2407

Return Receipt

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

Meyer Adelman.
(Signature or name of addressee)

E. Estescher.

✓ (Signature of addressee's agent)

Date of delivery 4-19-1938.

Form 3811

(Reverse Side)

Post Office Department
Official Business

Penalty for Private Use to
Avoid Payment of Postage,
\$300

Registered Article

No. 69213

Postmark of Delivering
Office

Insured Parcel

No. _____

Return to National Labor Relations Board
(Name of Sender)

Street and Number,
or Post Office Box, _____

Washington,
D. C.

(Stamp) Milwaukee Wis. Apr 19 1938 4:30 PM.

Post Office Receipt.

1185

2408

Return Receipt

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

Lanfrom, Tighe, Engelhard & Peck.

(Signature or name of addressee).

M. Baker.

(Signature of addressee's agent)

Date of delivery 4-19-1938.

Form 3811

(Reverse Side)

Post Office Department
Official Business

Penalty for Private Use to
Avoid Payment of Postage,
\$300

Registered Article
No. 69214
Insured Parcel
No. _____

Postmark of Delivering
Office

Return to National Labor Relations Board
(Name of Sender)

Street and Number,
or Post Office Box, _____

Washington,
D. C.

(Stamp) Milwaukee Wis. Apr 19 1938 4:30 PM.

1186

Post Office Receipt.

2409

Return Receipt

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

Alexander, Burke & Clark.

(Signature or name of addressee)

A. Nack.

(Signature of addressee's agent)

Date of delivery 4-19-1938.

Form 3811

(Reverse Side)

Post Office Department
Official Business

Penalty for Private Use to
Avoid Payment of Postage,
\$300

Registered Article

No. 69215

Postmark of Delivering
Office

Insured Parcel

No. _____

Return to National Labor Relations Board

(Name of Sender)

Street and Number,

or Post Office Box, _____

Washington,

D. C.

(Stamp) Milwaukee Wis. Apr 19 1938 4:30 PM.

Post Office Receipt.

1187

2410

Return Receipt

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

A. G. Goldberg.

(Signature or name of addressee)

E. Drexler.

(Signature of addressee's agent)

Date of delivery 4-19-1938.

Form 3811

(Reverse Side)

Post Office Department
Official Business

Penalty for Private Use to
Avoid Payment of Postage,
\$300

Registered Article
No. 69216
Insured Parcel
No. _____

Postmark of Delivering
Office

Return to National Labor Relations Board
(Name of Sender)

Street and Number,
or Post Office Box, _____

Washington,
D. C.

(Stamp) Milwaukee, Wis. Apr 19 1938 4:30 PM.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE
SEVENTH CIRCUIT.

• • • (Caption—6707) • • •

**CERTIFICATE OF THE NATIONAL LABOR
RELATIONS BOARD.**

The National Labor Relations Board, by its Secretary, duly authorized by Section 1 of Article VI, Rules and Regulations of the National Labor Relations Board, Series 1, as amended, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record in a proceeding had before said Board entitled "In the Matter of The Falk Corporation and Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge 1528", the same being Case No. C-293 before said Board, such transcript including the pleadings, testimony and evidence upon which the order of the Board in said proceedings was entered, and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

1. Charge filed by Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge No. 1528, and sworn to May 24, 1937.
2. Amended charge filed by said union and sworn to August 2, 1937.
3. Complaint issued by the National Labor Relations Board August 4, 1937.
4. Notice of hearing issued by the National Labor Relations Board August 4, 1937.
5. Respondent's answer verified August 12, 1937.
6. Certified copy of order of consolidation and designating James C. Batten, Trial Examiner dated August 14, 1937.
7. Motion to Intervene and Petition for Intervention filed by the International Union of Operating Engineers Local No. 311, affiliated with the American Federation of Labor, sworn to August 13, 1937.
8. Copy of letter, dated August 14, 1937, granting motion of International Union of Operating Engineers Local 311 to intervene.
9. Petition of the Independent Union of Falk Employees to intervene, verified August 12, 1937.
10. Copy of letter, dated August 13, 1937, granting petition of Independent Union of Falk Employees to intervene.

11. Amended petition for intervention filed by the International Union of Operating Engineers, sworn to August 16, 1937.

12. Answer of the Falk Corporation to the amended petition for intervention, verified August 17, 1937.

Documents listed hereinabove under items 1-13, inclusive, are contained in the exhibits and included under the following item:

13. Stenographic transcript of testimony before James C. Batten, Trial Examiner for the National Labor Relations Board, on August 16, 17, 18, 19, 20, 23, 24, and 25, 1937, together with all exhibits introduced in evidence.

14. Copy of intermediate report of Trial Examiner Batten dated November 2, 1937.

15. Copy of Respondent's exceptions to the intermediate report filed November 29, 1937.

16. Copy of exceptions filed by Intervenor Independent Union of Falk Employees November 30, 1937.

17. Copy of notice of hearing for purpose of oral argument, dated February 7, 1938.

18. Copy of list of appearances at oral argument February 25, 1938.

19. Copy of decision, findings of fact, conclusions of law, and order of the National Labor Relations Board issued April 18, 1938, together with affidavit of service and United States Post Office return receipts thereof.

In Testimony Whereof the Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the City of Washington, District of Columbia, this 29th day of June, 1938.

Nathan Witt,

(Seal) *Secretary National Labor Relations Board.*

U. S. C. C. A. 7. Filed Jun 30 1938. Frederick G. Campbell, Clerk.

Entered
July 22,
1938.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

October Term 1937

Friday, July 22, 1938

National Labor Relations Board,

Petitioner,

vs.

The Falk Corporation,

Respondent.

No. 6707.

ORDER.

Upon the stipulation of the parties filed this day and due consideration having been given, it is ordered that in printing the transcript of the record in the above case none of the exhibits introduced in evidence at the hearing before the Board shall be printed except as follows:

I. The documents included in Board's Exhibit 3, as follows: Notice of Hearing of Complaint Case, being a part of Board's Exhibit 3a; Complaint, being 3d, Charge, being 3e; Amended Charge, being 3f.

II. All of Board's Exhibits 5, 17, 18, 19, 21, 22, 27, 32, 34, 36 and 38.

III. All of Respondent's Exhibits 5, 6, 8, 9 and 12.

IV. All of Independent's Exhibits 1, 2 and 3.

And it is further ordered that those exhibits not printed shall be deemed part of the record before the Court and may be considered by the Court and referred to by the parties; and, that either party shall have the right to have any of said exhibits printed and included in the printed record in the event that appeal is later taken.

For the Court

J. Earl Major,
Judge, United States Circuit Court
of Appeals for the Seventh Cir-
cuit.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

• • (Caption—6707) • • •

Filed
July 22,
1938.

STIPULATION.

It is hereby stipulated and agreed by and between the attorneys for the parties in the above entitled case that in printing the transcript of the record in the above case none of the exhibits introduced at the hearing before the Board shall be printed except as follows:

I. The documents included in Board's Exhibit 3, as follows: Notice of Hearing of Complaint Case, being a part of Board's Exhibit 3a; Complaint, being 3d, Charge, being 3e; Amended Charge, being 3f.

II. All of Board's Exhibits 5, 17, 18, 19, 21 22, 27, 32, 34, 36 and 38.

III. All of Respondent's Exhibits 5, 6, 8, 9 and 12.

IV. All of Independent's Exhibits 1, 2 and 3.

It is further stipulated and agreed that those exhibits not printed shall be deemed part of the record before the Court and may be considered by the Court and referred to by the parties; and, that either party shall have the right to have any of said exhibits printed and included in the printed record in the event that appeal is later taken.

Charles Fahey

*General Counsel, National Labor
Relations Board.*

Dated: July 20, 1938.
Washington, D. C.

Leon B. Lamfrom
A. J. Engelhard
Attorneys for Respondent.

Dated: July 18, 1938.
Milwaukee, Wisconsin

Endorsed: U. S. C. C. A. 7. Filed Jul 22 1938. Frederick
G. Campbell, Clerk.

MICRO CARD

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UNITED STATES OF AMERICA

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE
SEVENTH CIRCUIT

No. 6707

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

THE FALK CORPORATION, RESPONDENT

Notice of petition for intervention

TO ROBERT B. WATTS, ESQ., ATTORNEY FOR PETITIONER, NATIONAL
LABOR RELATIONS BOARD, AND TO MESSRS. LAMPROM, TIGHE,
ENGELHARD & PECK, ATTORNEYS FOR RESPONDENT, THE FALK
CORPORATION,

Please take notice that, on the Petition of the Independent Union of Falk Employees, a copy of which is hereto attached, and on the pleadings filed herein, the undersigned will petition this Court, at a regular term, to be held at Chicago, Illinois, in the Federal Building, on the 4th day of October 1938, at 10:00 o'clock, in the forenoon, or as soon thereafter as counsel can be heard, for an order permitting the Independent Union of Falk Employees, the petitioner herein, to intervene as a party in the above entitled cause, and for such other relief as may be just.

Dated at Milwaukee, Wisconsin, this 11 day of August 1938.

ALEXANDER, BURKE & CLARK,
FRANK P. BURKE,
GILES F. CLARK,

*Attorneys for Petitioner,
Independent Union of Falk Employees.*

P. O. Address 110 East Wisconsin Avenue, Milwaukee, Wis.

United States Circuit Court of Appeals for the Seventh Circuit

I, Frederick G. Campbell, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages, numbered from 605 to 1191, inclusive, contain a true copy of the Volume 11 of the printed record, printed under my supervision and filed on the seventeenth day of August 1938, which, together with Volume 1 of the printed record and the Exhibits not reproduced in the printed record, certified herewith

under separate certificates, constitutes the record upon which the following entitled cause was heard and determined: National Labor Relations Board, Petitioner vs. The Falk Corporation, Respondent, No. 6707, October Term, 1938, as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 15th day of September A. D. 1939.

[SEAL]

FREDERICK C. CAMPBELL,
Clerk of the United States Circuit Court
of Appeals for the Seventh Circuit.

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit held in the City of Chicago and begun on the fifth day of October, in the year of our Lord one thousand nine hundred and thirty-seven, and of our Independence the one hundred and sixty-second.

6707

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

THE FALK CORPORATION, RESPONDENT

Petition for enforcement of order of National Labor Relations Board

And, to-wit: On the thirty-first day of August 1938 there was filed in the office of the Clerk of this Office, a Notice and Petition for Intervention, which said Notice and Petition are in the words and figures following, to-wit:

UNITED STATES OF AMERICA

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

THE FALK CORPORATION, RESPONDENT

Petition by Independent Union of Falk Employees for leave to intervene in the above-entitled cause

To the Judges of the United States Circuit Court of Appeals for the Seventh Circuit:

The Independent Union of Falk Employees, your petitioner, by its attorneys, Alexander, Burke & Clark, respectfully alleges and shows, as follows:

That it is an organization of employees of The Falk Corporation, of Milwaukee, Wisconsin, incorporated under the laws of the State of Wisconsin, and, at the time of the hearing of the above matter, before the National Labor Relations Board, had a membership consisting of over fifty percent (50%) of the employees employed by The Falk Corporation, not including executives, superintendents, foremen, assistant foremen, and others in a supervisory capacity, and was authorized, by its members, to represent them, for the purpose of collective bargaining, as outlined in the National Labor Relations Act, with their employer, The Falk Corporation.

That certain charges, sworn to on May 24, 1937, by Meyer Adelman, Field Director of the Steel Workers Organizing Committee, were filed on said day, with the National Labor Relations Board, on behalf of the Amalgamated Association of Iron, Steel & Tin Workers of North America, Lodge No. 1528, charging The Falk Corporation with engaging in certain unfair labor practices, as defined by the National Labor Relations Act.

That, thereafter, a hearing on said charges was had, at Milwaukee, Wisconsin, before an Examiner, the Honorable James C. Batten, designated by the National Labor Relations Board for that purpose.

That the Independent Union of Falk Employees filed a petition to intervene in said hearing, on August 13th, 1937, and was given permission so to do, by the Trial Examiner, on August 16th, 1937.

That four petitioner was represented by its counsel in said hearing, and produced witnesses on its behalf.

That, thereafter, and on November 2, 1937, the Trial Examiner filed his Intermediate Report, in which he found, among other things, that The Falk Corporation had engaged in unfair labor practices within the meaning of Section 8, Subsection 1, 2, and 3, and Section 2, Subsection 6 and 7, of the National Labor Relations Act.

The Trial Examiner, in his Intermediate Report, found that:

"The Falk Corporation, by dominating and interfering with the administration of the Independent Union of Falk Employees and with the formation of this labor organization and by contributing support to this labor organization, has engaged in and is engaging in an unfair labor practice affecting commerce within the meaning of Section 8, subdivision (2) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act."

That, thereafter, and on November 29, 1937, the Independent Union of Falk Employees filed Exceptions to the Findings of the Trial Examiner, as found in his Intermediate Report.

That, thereafter, and on February 25, 1938, the Independent Union of Falk Employees, by its counsel, presented oral argument before the National Labor Relations Board, at Washington, D. C., in support of the Exceptions filed by it.

That, thereafter, and on the 18th day of April 1938, the National Labor Relations Board filed its Decision, Order, and Direction of Election in said matter.

That, thereafter, and on or about the 29th day of June 1938, the National Labor Relations Board notified your petitioner that it had filed with the above-named Court a petition to enforce its Order, dated April 18th, 1938.

That the Independent Union of Falk Employees has not been made a party to the proceeding before the above-named Court, to enforce the Order of the National Labor Relations Board.

That the Order of the National Labor Relations Board, among other things, provides that The Falk Corporation:

"(a) Withdraw all recognition from the Independent Union of Falk Employees as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, and other conditions of employments, and completely disestablish the Independent Union of Falk Employees as such representative;

"(b) Immediately post notices in conspicuous places throughout its Milwaukee plant and maintain such notices for a period of thirty (30) consecutive days stating (1) that the respondent will cease and desist in the manner aforesaid, and (2) that it has withdrawn all recognition from the Independent Union of Falk Employees as the representative of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, and other conditions of employment, and that it has completely disestablished said organization as such representative;"

That substantial rights of the Independent Union of Falk Employees will be affected by the Order of this Court enforcing the said Order of the National Labor Relations Board.

That the rights of the members of the Independent Union of Falk Employees, as provided by the National Labor Relations Act, Section 9 (a), and, particularly, that section reading as follows:

"Provided, that any individual employee, or group of employees, shall have the right, at any time, to present grievances to their employer."

is by the Order of the National Labor Relations Board denied to the members of the Independent Union of Falk Employees.

That it is necessary that the Independent Union of Falk Employees be permitted to intervene, to assure a full and complete hearing of said petition filed by the Board, and for the further reason that the National Labor Relations Board seeks to deny to the members of said Independent Union of Falk Employees rights guaranteed to them by the National Labor Relations Act.

Wherefore, your petitioner, the Independent Union of Falk Employees, prays that this Court make an order granting it leave to

intervene herein, as a party, and for such other and further relief as to this Court seems just.

INDEPENDENT UNION OF FALK EMPLOYEES,
By FRED C. WILSON, *President,*

Petitioner.

ALEXANDER, BURKE & CLARK,

FRANK P. BURKE,

GILES F. CLARK,

Attorneys for Petitioner,

Independent Union of Falk Employees.

STATE OF WISCONSIN,

Milwaukee County, ss:

Fred C. Wilson, being first duly sworn, on oath deposes and says that he is an officer, to-wit: the President of the Independent Union of Falk Employees, the petitioner named in the foregoing petition, and makes this verification for and on its behalf, being duly authorized so to do; that he has read the above and foregoing petition and knows the contents thereof, and the same is true of his own knowledge, excepting as to those matters therein stated on information and belief, and as to those, he believes it to be true.

FRED C. WILSON.

Subscribed and sworn to before me this 12 day of August, A. D., 1938.

[SEAL]

GILES F. CLARK,

Notary Public, Milwaukee Co., Wis.

My commission expires April 6, 1941.

And afterwards, to-wit: On the first day of October 1938, the following further proceedings were had and entered of record, to-wit:

Saturday, October 1, 1938

Court met pursuant to adjournment

Before Hon. J. EARL MAJOR, Circuit Judge

6707

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

THE FALK CORPORATION, RESPONDENT

Petition for enforcement of order of the National Labor Relations Board

On petition of counsel for Independent Union of Falk Employees, It is ordered that Independent Union of Falk Employees be, and they are hereby granted leave to intervene in this cause.

1198

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit held in the City of Chicago and begun on the fourth day of October, in the year of our Lord one thousand nine hundred and thirty-eight, and of our Independence the one hundred and sixty-third.

And afterwards, to-wit: On the fourteenth day of October 1938, the following further proceedings were had and entered of record, to-wit:

Friday, October 14, 1938

Court met pursuant to adjournment

Before Hon. EVAN A. EVANS, Circuit Judge; Hon. J. EARL MAJOR, Circuit Judge; Hon. WALTER E. TREANOR, Circuit Judge

6707

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

THE FALK CORPORATION, RESPONDENT

Petition for enforcement of order of the National Labor Relations Board

Now this day come the parties by their counsel, and this cause comes on to be heard on the transcript of the record and the briefs of counsel, and on oral argument by Mr. Robert B. Watts, counsel for Petitioner, Mr. Leon B. Lamfrom, counsel for Respondent, and by Mr. Giles F. Clark, counsel for intervenor, Independent Union of Falk Employees, and the Court having heard the same takes this matter under advisement.

And afterwards, to-wit: On the seventh day of March 1939, there was filed in the office of the Clerk of this Court, the Opinion of the Court, which said Opinion is in the words and figures following, to-wit:

In the United States Circuit Court of Appeals for the Seventh Circuit

No. 6707. October Term, 1938; January Session, 1939

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

THE FALK CORPORATION, RESPONDENT

March 7, 1939

Before EVANS, MAJOR, and TREANOR, Circuit Judges

Petition for enforcement of order of National Labor Relations Board

Respondent is a Wisconsin corporation operating a plant in Milwaukee which employs about 1,200 employees. A labor organization

known as the Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge No. 1528, in 1937, preferred charges of unfair labor practices against respondent with the National Labor Relations Board. These charges, after investigation, resulted in the National Labor Relations Board's filing a complaint against respondent, which, in turn, filed its answer wherein it denied all charges of unfair labor practices. A somewhat lengthy hearing was had before a trial examiner designated by the Board. He made and filed a report wherein he found against respondent. He reported respondent had engaged in, and was engaging in, unfair labor practices within the meaning of section 8 (1), (2), and (3) of the Act¹ and recommended that it cease and desist therefrom, and further that it take certain affirmative action to remedy these alleged unlawful practices. The examiner also found that respondent had not violated section 8 (5) of the Act. Respondent and the Independent Union of Falk Employees, hereinafter termed the Independent, filed exceptions to the examiner's report. The Board took up the matter, heard oral arguments, received briefs, and later, on April 18, 1938, made and filed a decision which set forth its findings of fact and conclusions. It also entered an order directed to respondent and injunctive in character.

Petitioner seeks from us an order of enforcement of its order against respondent, as provided for in section 10 (e) of the Act.

EVANS, Circuit Judge. Respondent has greatly narrowed the controverted issues by conceding the interstate character of the business transacted by it, the jurisdiction of petitioner over it, and the existence of a labor dispute such as falls within the purview of the National Labor Relations Act.

It squarely meets the fact issue and unequivocally denies that it ever engaged in unfair labor practices. As a result, the sole question before us is the sufficiency of the evidence to support the findings of the examiner which were approved by the Board. In short, we are to ascertain whether respondent engaged in unfair labor prac-

¹ 29 U. S. C. A. Sec. 151.

"It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

Section 8 (1), (2), (3) (Title 29 U. S. C. A. Sec. 158).

"It shall be an unfair labor practice for an employer—

"(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

"(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: Provided, That subject to rules and regulations made and published by the Board pursuant to section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

"(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: Provided, That nothing in this Act, or in sections 701 to 712 of Title 15, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this chapter as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective-bargaining unit covered by such agreement when made.

tices such as are condemned in section 8 (1) and (2). Specifically we are asked to determine whether the evidence supported the finding that (1) respondent interfered with, restrained, or coerced its employees in the exercise of their right to self-organize, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, or to engage in concerted activities for the purpose of collective bargaining or in mutual aid or protection or that (2) respondent attempted to dominate or interfere with the formation or administration of a labor organization in which its employees, or some of them, were members or about to become members.

The quantum of proof necessary to sustain a finding by the Board was defined in the recent decision of *National Labor Relations Board, petitioner, v. Columbian Enameling and Stamping Co., Inc.*, respondent, decided February 27, 1939. There, it was said:

"Section 10 (e) of the Act provides: '* * * The findings of the Board as to the facts, if supported by evidence, shall be conclusive.' But as has often been pointed out, this, as in the case of other findings by administrative bodies, means evidence which is substantial, that is, affording a substantial basis of fact from which the fact in issue can be reasonably inferred. * * * Substantial evidence is more than a scintilla, and must do more than create a suspicion of the existence of the fact to be established. 'It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.' *Consolidated Edison Co. of New York v. National Labor Relations Board*, supra, and it must be enough to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury."

The pronouncement of the test to be applied by a reviewing court to ascertain whether a finding by the National Labor Relations Board "is supported by the evidence" appears in another late case, decided December 5, 1938, *Consolidated Edison Co. of New York v. National Labor Relations Board*. There, the court said:

"* * * The companies contend that the Court of Appeals misconceived its power to review the findings and, instead of searching the record to see if they were sustained by 'substantial' evidence, merely considered whether the record was 'wholly barren of evidence' to support them. We agree that the statute, in providing that 'the findings of the Board as to the facts, if supported by evidence, shall be conclusive,' means supported by substantial evidence. *Washington, Virginia & Maryland Coach Co. v. National Labor Relations Board*, 301 U. S. 142, 147. Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Appalachian Electric Power Co. v. National Labor Relations Board*, 93 F. (2d) 985, 989; *National Labor Relations Board v. Thompson Products*, 97 F. (2d) 13, 15; *Ballston-Stillwater Co. v. National Labor Relations*

Board, 98 F., (2d) 758, 760. We do not think that the Court of Appeals intended to apply a different test. In saying that the record was not 'wholly barren of evidence' to sustain the finding of discrimination, we think that the court referred to substantial evidence. *Ballston-Stillwater Co. v. National Labor Relations Board*, supra.

"The companies urge that the Board received 'remote hearsay' and 'mere rumor.' The statute provides that 'the rules of evidence prevailing in courts of law and equity shall not be controlling.' The obvious purpose of this and similar provisions is to free administrative boards from the compulsion of technical rules so that the mere admission of matter which would be deemed incompetent in judicial proceedings would not invalidate the administrative order. *Interstate Commerce Commission v. Baird*, 194 U. S. 25, 44; *Interstate Commerce Commission v. Louisville & Nashville R. R. Co.*, 227 U. S. 88, 93; *United States v. Abilene & Southern Rwy. Co.*, 265 U. S. 274, 288; *Tagg Bros. & Moorhead v. United States*, 280 U. S. 420, 442. But this assurance of a desirable flexibility in administrative procedure does not go so far as to justify orders without a basis in evidence having rational probative force. Mere uncorroborated hearsay or rumor does not constitute substantial evidence."

The substance of the Board's findings is set forth in the margin.²

In support of the finding petitioner relies on the following alleged acts by respondent's managerial forces as indicative of an intent to

² The respondent is a Wisconsin corporation engaged in the design, production, sale, and distribution of steel castings, gears, speed reducers, and various other products. 65% of its raw products come from outside the State; 75% of its sales are to points outside the State.

The Steel Committee is the authorized bargaining agent of the Amalgamated Association, which is an affiliate of the C. I. O. The Operating Engineers local is an affiliate of the A. F. of L. The Independent Union is a company union.

There was no employee representation prior to 1933. After the enactment of the N. I. R. A. a Works Council was set up at the suggestion of Harold Falk, vice-president of respondent, who advised the employees "that it would be inadvisable to choose an outside organization and that the respondent would not allow a closed shop." Ballots cast for outsiders were not counted. The chairman and secretary of the Works Council were appointed by the management. Employee representatives were paid for time spent at Works Council meetings. The Works Council held its last meeting April 8, 1937, because it was thought in conflict with State and Federal legislative policy against company-dominated unions. There was testimony that Harold Falk at this last meeting told them that they could form an independent union on the company's property but would have to thereafter meet off the property. Falk stated he said that another company was having difficulty between the C. I. O. and A. F. of L. unions; that the pay raise which had theretofore been agreed upon to become effective June 1, 1937, would stand only so long as the Works Council stood, and if it fell, new negotiations would have to be had.

Members of the Works Council met April 12, 13, and 14 in the plant. Falk talked concerning the Wagner Act at the April 12 meeting, and agreed to advance the pay raise from June 1, to May 1, to show the company's good faith—it is argued it was made to keep the C. I. O. out of the plant, and to influence the choice of the labor organization to be selected.

Employees sent for Harold Falk to talk at a meeting on April 13, but he was not available. Connell, a vice-president, told them that under the Wagner Act he could not advise them. After the meeting some of the men met Harold Falk and he told them it was all right to go ahead with the inside union. He denied he also told them to work quickly because the C. I. O. was working in the plant. The Committee decided to get an attorney and on suggestion of Falk hired Attorney Burke. Falk made the appointment to confer with Burke. There was evidence of agreement to conceal who suggested the attorney. A committee conferred with Burke on April 14. The Independent had a meeting on April 18, and the leaders on being questioned as to who suggested Attorney Burke did not disclose the truth. The Board interprets this secretiveness to mean that the organizers of the Independent realized the company's domination and feared a disastrous effect would follow its disclosure. The meeting in effect adopted the committee's conclusion, made at its meeting with Burke to run along as an association and incorporate later. They incorporated after an intimate talk between three employees and the

prevent the free exercise of the employees' right to organize for collective bargaining.

1. Respondent's hostility to outside labor organizations.

2. Respondent's action in anticipating State and national legislation by creating a Works Council, an employee organization, which it controlled through the appointment of its chairman and secretary. Its control and domination of this inside labor organization were manifested by warnings to the employees by the personnel manager that no employee was to vote for "any outsider." On one occasion when this direction was ignored, a second election was ordered and employees told "not to waste their time" on outsiders as all ballots for them would be destroyed. The employees were also notified that the company would not bargain with an outsider. The structure and functioning of the Works Council demonstrated its continuance would violate section 8 (2) after such legislation was enacted.

attorney. The three employees signed the articles of incorporation although without authority so to do. They were filed April 20, 1937. The company was notified and told that about 400 employees were members, and requested a meeting for collective bargaining. The meeting was held April 23 with the three employees present. The company required no proof other than the statement of the incorporators that they were authorized representatives of a majority of the employees.

Amalgamated and Independent conducted an intensive campaign during March, April, and May; the former expressed their hostility to C. I. O. and preference for inside union; they said the management had ordered them not to express opinions on the subject, but admitted that they had expressed their opinion.

The Operating Engineers at the same time were attempting to organize a smaller group of employees, in the powerhouse. They succeeded in getting applications from 14 or 17 employees, but Mr. Falk talked with these men, and not one showed up at a meeting of the union. Falk had sent them a letter stating he was not in favor of a union. Letters of withdrawal from the union were sent in by five engineers; these letters were prepared in the office of the attorneys for Independent.

The Board concluded that the Independent was directly attributable to the activities of respondent. Respondent's antipathy to outside unions was known to the employees. The hasty recognition of the Independent enabled the respondent to utilize it within two weeks as a pretext for denying collective bargaining to the Amalgamated.

These are the acts relied on to show respondent dominated and interfered with the formation and administration of the Independent and contributed support to it and thereby interfered with, restrained and coerced its employees in the exercise of their rights guaranteed in Section 7 of the Act.

The Board ordered an election by the powerhouse employees to determine if they wanted to belong to the separate unit of the Operating Engineers or to the larger unit of production employees under the Amalgamated.

The Board dismissed the charge in the petition that there was a violation of section 8 (5) charging refusal by the company to bargain collectively with the Amalgamated around May 3, 1937, because the records show that Independent had from 693 to 800 members out of about 1,316 employees, and therefore Amalgamated did not prove it represented a majority of the employees.

The Board found that the respondent dominated and interfered with the formation and administration of the Independent and contributed support to it; and used the Independent as a weapon to prevent the employee's right to self-organize. It ordered the withdrawal of all recognition of the Independent.

Inasmuch as this matter affected commerce the Board ordered an election to determine the appropriate bargaining unit and the representation of employees.

Conclusions. The Steel Workers Committee, Amalgamated Association, Operating Engineers, and Independent Union are all labor organizations within meaning of Sec. 2 (5).

The respondent is engaged in unfair labor practices under Sec. 8 (1) by interfering with employees' right to self-organization; it is engaging in unfair labor practices within Sec. 8 (2) by contributing support to and dominating formation of Independent; and these two matters constitute unfair labor practices within meaning of Sec. 2 (6) (7) of the Act. A question affecting commerce has arisen concerning representation of employees within meaning of Sec. 9 (c) and Sec. 2 (6) (7).

Order. Respondent and its officers are ordered to cease and desist from dominating Independent or any other labor organization of its employees and contributing support to any such organization; from interfering with their employees' right to self-organization; collectively bargain; to withdraw all recognition from the Independent as the bargaining agent of its employees; to immediately post notices in conspicuous places in its plant stating that it will cease and desist as aforesaid, and that it has completely disestablished Independent as representative. The complaint is dismissed so far as it alleges unfair labor practices under Sec. 8 (3) in discharging Anton Kinch, and in so far as it alleges that the respondent has engaged in an unfair labor practice under Sec. 8 (5).

3. The dissolution of the Works Council was used by respondent as a means of entrenching the Independent as its successor.

4. Respondent used an offer of wage increase as a lever to discourage connection with outside organizations. Supporting this assertion petitioner points to a statement by the vice-president, made on the occasion of the dissolution of the Works Council, that a general increase scheduled for June 1 would be advanced to May 1, presumptively for the purpose of preventing an outside organization—the C. I. O.—or the A. F. of L.—from organizing the company's employees. This alleged reference to the C. I. O. and A. F. of L. is denied by Falk.

5. The management took the initiative in organizing and launching the Independent after learning that the Works Council could no longer be maintained.

6. In promoting and organizing the Independent, respondent played a dominating part; the personnel manager actively participated in arranging for the meeting, distributing notices thereof; his activities and attitude as disclosed by a statement that he believed it was the business of the company to see to the notification of employees of the meeting for the purpose of organization of the Independent; the superintendents and foremen caused or "saw to it" that employees attended the meeting and gave the employees to understand that the Independent had the backing or approval of the company.

7. The meeting of April 12 was held upon the company's grounds. At the meeting to ascertain whether the Independent should be organized to take the place of the Council, the management announced that it would advance the date of the increase in wages if the employees immediately joined the Independent. The advance from June 1 to May 1 as the effective date of increase in wages was inconsistent with the management's previous assertion that the prices for the new orders would go into effect June 1.

8. Respondent selected an attorney who thereafter was more solicitous of respondent's wishes than he was of the welfare of the employees.

9. Respondent paid the organizers their regular hourly wage for the time spent at the meetings leading up to the organization of the Independent as well as for the time spent in conferences with Burke, the attorney selected by respondent. It is true that later these amounts were deducted from the organizers' pay on advice of counsel for the respondent, but not until after the Independent was organized and recognized by respondent as the sole bargaining agent. Failure to inform the employees of the selection of Burke by the management indicated an intent to conceal.

10. Respondent's recognition of Independent as exclusive agent without ascertaining whether it represented the majority and its refusal to bargain with an outside union that claimed to represent a

majority. Respondent used its influence to overcome a majority of the Engineers who had previously requested recognition as representatives of the men employed in the power house. The management consistently made known its preference for the Independent and assisted in distributing cards, and the supervisory staff consistently resorted to action which would indicate hostility to unions and in particular to outside unions.

The foregoing constitutes the basis of the Board's findings. The examiner believed the charges to be true. So did the Board.

We are satisfied that some of these charges were explained satisfactorily by the respondent. Others, standing alone, afford no support for the Board's conclusions, if true. For example, we are convinced that respondent was innocent of any intention to influence action when it permitted the use of its premises as a meeting place of its employees. Moreover, it corrected its action in paying members of the committee who were perfecting the organization of the Independent during working hours, after it learned that such payments might be construed as an act of preference towards Independent. This deduction from the employees' wage was after the organization had been perfected, but it impresses us as indicative of fair treatment of employees who were losing time attending meetings preliminary to organizing a union. It indicates the respondent was anxious to comply with the letter and the spirit of the law. We fail to find in these payments of a few hours' committee work any evidence of attempted domination of employees' choice of union.

Likewise, we can see nothing to criticize in Mr. Falk's action expressing a preference for a local over an outside union. Especially is this true where the employee asks the employer for advice. There is much evidence in this record which is indicative of a very wholesome cooperative spirit existing between management and employees. Surely, it is desirable and bespeaks the confidence of employees in the management to have the old employees ask the executive officer of the employer to express his views and his labor union preference.

On the other hand, the position of the employer is a most delicate one. Surely, he has the right to his views. And the right to entertain views is rather valueless if it be not accompanied by the right to express them. And this right to express his views is clearer when they are expressed in response to an interrogatory by one of his employees. And yet, the voice of authority may, by tone inflection, as well as by the substance of the words uttered, provoke fear and awe quite as readily as it may bespeak fatherly advice. The position of the employer, where, as here, there is present, genuine and sincere respect and regard, carries such weight and influence that his words may be coercive when they would not be so if the relation of master and servant did not exist.

It must be understood that we are not the fact-finding body.

Review of a discretionary order of an administrative body is quite

Our duty is to ascertain whether there is substantial evidence to support the charges found by the Board.

We are satisfied that such evidence appears in the record. Not only does it appear, but taken as a whole it rather conclusively points to the findings made by the Board. If certain testimony be accepted as true, and we are not prepared to reject it, the conclusion is inescapable that respondent was and is strongly and outspokenly opposed to a closed shop; that it earnestly endeavored to prevent the unionizing of its employees and when the inevitable became imminent, it sought to dominate the formation organization, and activities of the union least objectionable to it. It thereby interfered with the employees' free right to self-organization which is in violation of section 8 (1) and (2).

Respecting the right of the employee to unionize and to be free of employer influence in so doing, Congress has spoken and the court has sustained the legislation. The language of the court has put at rest any doubt which respondent may have previously entertained. It said (Nat. Labor Relations Board v. Jones & Laughlin Steel Corp., 301 U. S. 1, 33):

"Employees have as clear a right to organize and select their representatives for lawful purposes as the respondent has to organize its business and select its own officers and agents. Discrimination and coercion to prevent the free exercise of the right of employees to self-organization and representation is a proper subject for condemnation by competent legislative authority."

The court further said (ibid, page 42):

"Experience has abundantly demonstrated that the recognition of the right of employees to self-organization and to have representatives of their own choosing for the purpose of collective bargaining is often an essential condition of industrial peace. Refusal to confer and negotiate has been one of the most prolific causes of strife. This is such an outstanding fact in the history of labor disturbances that it is a proper subject of judicial notice and requires no citation of instances. The opinion in the case of *Virginian Railway Co. v. System Federation*, No. 40, supra, points out that, in the case of carriers, experience has shown that before the amendment, of 1934, of the Railway Labor Act 'when there was no dispute as to the organizations authorized to represent the employees and when there was a willingness of the employer to meet such representative for a discussion of their grievances, amicable adjustment of differences had generally followed and strikes had been avoided.' That, on the other hand, 'a prolific source of dispute had been the maintenance by the railroad of company unions and the denial by railway management of the authority of representatives chosen by their employees.'"

Order to Post Notices.—The Board ordered the respondent to post notices for thirty days, stating that it "will cease and desist" doing the acts prohibited by the order, and that it has withdrawn

all recognition of the Independent Union as the representative of its employees for the purpose of dealing with it.

Objection is made to this order on the ground that it is compelling the respondent to make a public admission of guilt. In support of its requested modification of the Board's order, respondent cites National Labor Relation Board v. Abell Co., 97 F. (2d) 958, where the court relieved the employer from that part of the order which required the posting of such a notice. We are convinced, however, that this case can not serve us as precedent, but that in a matter of this kind, each decision must rest upon the facts of the individual case.

It is argued that the posting of such a notice containing a statement that it will cease and desist from prohibited actions in the future implies that respondent has indulged in such practices in the past.

We differ with the Fourth Circuit's conclusion in that we do not draw the inference from an enforced compliance with an order which required the employer to state it "will cease and desist" from enumerated practices, that it is thus making an admission, voluntary or involuntary, that it has in the past been guilty of such practices. The purpose of the notice is to convey to the employees the knowledge of a guarantee of an unhampered right in the future to determine their own labor affiliation. The very fact that the company resists the enforcement of the "cease and desist" order is evidence not of admission or acquiescence in a determination of guilt, but of a contrary belief on the part of the employer.

The factual controversy having been settled officially and judicially, the losing party submits and as a good loser complies with the terms fixed by the order of the fact finder. It not only should submit to the finding of the arbiter, it must do so. That is the logic of the situation. Moreover, the findings are against the respondent. The final order disposing of any case must be on the basis of the determinative findings, not on an attempt to mollify the losing party. It is hardly necessary for us to observe that our opinion is not to be construed as denying to the employee the right to organize or join an independent union as readily as an organized union. The employees must be perfectly free at all times, and this means in the future, to select the union they prefer.

We conclude that the order of the Board is valid and that its petition for enforcement should be, and is hereby, granted.

A true Copy.

Teste.

*Clerk of the United States Circuit Court
of Appeals for the Seventh Circuit.*

And on the same day, to-wit: On the seventh day of March 1939 the following further proceedings were had and entered of record, to-wit:

Tuesday, March 7, 1939

Court met pursuant to adjournment

Before Hon. EVAN A. EVANS, Circuit Judge; Hon. J. EARL MAJOR, Circuit Judge; Hon. WALTER E. TREANOR, Circuit Judge

6707

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

THE FALK CORPORATION, RESPONDENT

Petition for enforcement of order of the National Labor Relations Board

This cause came on to be heard on the petition for enforcement of an order of the National Labor Relations Board entered in this cause, the Answer thereto, the transcript of the record of proceedings before the said Board, and the briefs of counsel, and was argued by counsel.

On consideration whereof, it is ordered that the said petition for enforcement of the Order of the National Labor Relations Board, entered on April 18, 1938, be, and the same is hereby, granted.

And afterwards, to-wit: On the twenty-third day of May 1939 the following further proceedings were had and entered of record, to-wit:

Tuesday, May 23, 1939

Court met pursuant to adjournment

Before Hon. EVAN A. EVANS, Circuit Judge; Hon. J. EARL MAJOR, Circuit Judge; Hon. WALTER E. TREANOR, Circuit Judge

6707

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

THE FALK CORPORATION, RESPONDENT

Petition for enforcement of order of the National Labor Relations Board

Now this day come the parties by their counsel, and this cause comes on to be heard on the form of decree to be entered in this

cause, and on oral argument by Mr. Robert B. Watts, counsel for petitioner, and by Mr. A. J. Engelhard, counsel for respondent, and the Court having heard the same takes this matter under advisement.

It is further ordered that leave be, and it is hereby, granted to petitioner to file within five days additional suggestions, and to respondent to file within five days thereafter a reply thereto.

And afterwards, to-wit: On the thirteenth day of July 1939 there was filed in the office of the Clerk of this Court an Opinion on Objections to the Entry of the Final Decree, which said Opinion is in the words and figures following, to-wit:

In the United States Circuit Court of Appeals for the Seventh Circuit

No. 6707. October Term, 1938, April Session, 1939

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

THE FALK CORPORATION, RESPONDENT

July 13, 1939

On objections of the Board to the entry of the final decree as drafted by the court

Before EVANS, MAJOR, and TREANOR, Circuit Judges.

EVANS, Circuit Judge. Upon the filing of the opinion in this case both parties submitted draft orders for entry by this court. We found ourselves unable to accept either of the proposed orders and therefore drew one ourselves. To this order, the National Labor Relations Board filed objections, and a hearing was had at which time both parties gave us the benefit of extended oral arguments which were supplemented by briefs.

Controversy arises over the following paragraphs which this court on its own volition included in the final order:

"It is further ordered that said respondent withdraw recognition of the Independent Union as the representative of all or any of its employees for the purpose of dealing with it, the respondent, concerning grievances, labor disputes, wages or rates of pay, hours of employment, and other conditions of employment of labor; provided, however, that the said employees shall remain free to choose at the coming election, or any future election, the Independent Union to represent them in labor relation dealings with respondent; and provided further, however, that the said employees be uninfluenced or coerced in said election by the said respondent and that the respondent refrain from exercising any influence or coercion over the employees in their selection of said Independent Union. * * *

"It is further ordered that this court, by this order, is not approving nor is it disapproving the direction of the National Labor Rela-

tions Board in reference to a coming or possible election by employees to choose their bargaining agency, and this order is not to be construed as approving any future action which does not place upon the ballot the names of all labor agencies or unions which are seeking the votes of the employees to represent them in collective bargaining with respondent over labor disputes, wages, etc."

If we had nothing before us but the terms of an election by the employees about to take place, we would not act. The holdings of courts would justify our nonaction at this stage of the proceedings. *Armour & Co. v. N. L. R. B.*, decided by this court, Oct. 10, 1938, on authority of *Matter of Petition of N. L. R. B.*, decided by U. S. Supreme Court, 304 U. S. 486; *N. Y. Handkerchief Co. v. N. L. R. B.*, decided May 27, 1938, 97 F. (2d) 1010.

We are, however, not merely passing on the terms of a contemplated or coming election. We have much broader and comprehensive issues to deal with. We are disposing of a labor dispute case wherein the proceedings have gone beyond mere plans by the Board for the calling of an election. We are, upon the Board's petition, disposing of a labor dispute which involved alleged interference on the part of the employer with the selection of the bargaining agent by the employees.

In affirming the finding of the Board that such interference occurred, we have, in addition to ordering certain action by the employer (a disclaimer, so to speak) before us for final disposition, the matter of the selection of the bargaining agent. It is not a case of our assuming jurisdiction in reference to an election, which may be held or called off, and therefore is not in the state of finality which permits of review, but we are passing upon the application of the Board for an order which deals with the selection of a bargaining agent and which, if we adopt the Board's position, proposes to eliminate for all time one of the candidates—the Independent Union. Under such circumstances we think the jurisdiction of the court to dispose of the matter clearly exists. Since the foregoing was written the Sixth Circuit has announced an opinion which upholds jurisdiction of the court of appeals upon facts not as strong as ours. (*International Brotherhood of Electrical Workers v. Nat. Labor Relations Board*, decided June 28, 1939.)

Nor can final disposition of the order which the Board has petitioned this court to enforce be made without a consideration of the wishes of the employees, as well as of the action of the employer. The final disposition of this dispute calls for determination of a very vital question, namely, the right of the employees to freely select their bargaining agency. It may be true, and the Labor Board has so found and we have approved of its finding, that the employer exerted improper influence in favor of the Independent Union as the employees' bargaining agency and for that reason the selection of that body is, by this order, set aside. This, however, does not justify our refusing to the employees the right to freely select their bargaining agency—even though their selection be the same one as

was chosen before, when there was improper influence by the employer.

The situation is not dissimilar to that of an election where two political parties are seeking the favor of the electorate. In the course of one election improper influence was exerted. As a result the election is set aside and a new one is ordered. Assuming the second election is to give to the electors free opportunity to select their choice, the elimination of one party or its candidate from the ballot would not promote such an end. The spirit of the National Labor Relations Act calls for the free, the unhampered exercise of the employees' right to choose their bargaining agent. That free right does not exist when the employer influences the employees' action by methods which are condemned by the law or the decisions of the courts. Neither is it free or unhampered when the employees are denied the right to select one of the agencies or candidates by forcing that agency off the ballot.

It is for this reason that we have provided in the order that the coming election shall be free, uninfluenced by the employer and unhampered by any election order which eliminates as a contender one agency which has, apparently, substantial support among the employees. A copy of the order is here set forth:

TITLE

Whereas the National Labor Relations Board has petitioned this court for an order enforcing its order entered April 18, 1938, directing the respondent, The Falk Corporation, to cease and desist from dominating, interfering, and contributing to the support of the Independent Union of Falk Employees or any other organization of its employees, or interfering with the employees' right to self-organization and collective bargaining; and ordering the respondent to withdraw all recognition from the said Independent Union, and to post notices that it will cease and desist as aforesaid and withdraw recognition from the said Independent Union; and

Whereas this court on March 7, 1939, filed its opinion upholding the order of the Board,

It is hereby ordered that the Falk Corporation, respondent herein, cease and desist from (a) dominating or interfering with the formation or administration of the Independent Union of Falk Employees or of any other labor organization of its employees and from contributing financial or other support to said Independent Union or any other labor organization; (b) from interfering with, intimidating, restraining, coercing, or endeavoring to coerce, its employees in their right to form, join, or assist any labor organization or in exercising their right to freely and collectively bargain through representatives of their own choosing, or to freely engage in concerted activities for the purpose of collective bargaining.

It is further ordered that said respondent withdraw recognition of the Independent Union as the representative of all or any of its

employees for the purpose of dealing with it, the respondent, concerning grievances, labor disputes, wages, or rates of pay, hours of employment, and other conditions of employment of labor; provided, however, that the said employees shall remain free to choose at the coming election, or any future election held or conducted pursuant to the provisions of the N. L. R. Act, the Independent Union to represent them in labor relation dealings with respondent; and provided further, however, that the said employees be uninfluenced or coerced in said election by the said respondent and that the respondent refrain from exercising any influence or coercion over the employees in their selection of said Independent Union.

It is further ordered that the respondent shall post notices in conspicuous places throughout its Milwaukee plant and maintain such notices for a period of thirty consecutive days stating that the respondent will and does withdraw recognition of the Independent Union of Fork Employees as representative of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages or rates of pay, hours of employment, and other conditions of employment, and that it has, and does, completely disestablish such labor organization as such representative, and that it will not recognize it until and unless its said employees freely and of their own choice select the Independent Union as their representative to so deal with said respondent concerning said labor disputes.

It is further ordered that the respondent notify the Regional Director for the Twelfth Region in writing what steps it has taken to comply with this order, within forty days from the date of this order or in case application is made to the United States Supreme Court for a writ of certiorari, within thirty days from the date the Supreme Court affirms the decree or denies the writ, if it takes either action.

It is further ordered that this court, by this order, is not approving nor is it disapproving the direction of the National Labor Relations Board in reference to a coming or possible election by employees to choose their bargaining agency, and this order is not to be construed as approving any future action which does not place upon the ballot the names of all labor agencies or unions which are seeking the votes of the employees to represent them in collective bargaining with respondent over labor disputes, wages, etc.

TREANOR, Circuit Judge, concurring in part. I do not concur in that part of the mandate of this Court which purports to control the election which has been authorized by the Board. There is no requirement in the National Labor Relations Act that the Board use an election to determine the majority choice of bargaining agents; and the whole matter of providing a method for the determination of such choice is left in the sound discretion of the Board. Whether an election shall be used at all, or whether the name of one or more proposed bargaining agents shall be placed upon the ballot, must be determined by the Board in the light of the circumstances existing at the time when it becomes necessary for the Board to

officially recognize the existence of a bargaining agent. In the instant case two organizations were competing for the privilege of representing the employees as their bargaining agent. The National Labor Relations Board has found, and this Court has affirmed the finding, that one of the groups was being dominated unlawfully by the employer and while so dominated could not be recognized as a bargaining agent. The National Labor Relations Board ordered the disestablishment of that group as a bargaining agent and provided for an "election" to give the employees a chance to express their sentiments respecting the other organization.

I do not think that the action of the Board in providing for the election is before this Court; but if it were I cannot agree that it was an abuse of discretion on the part of the Board to place upon the ballot only the organization which was competing with the company union which the Board found was being dominated unlawfully by the employer. But since in my opinion no question relating to the proposed election has been presented to this Court, I do not think that this Court should commit itself either to an approval or disapproval of the Board's order providing for an election; nor do I believe that this Court has the power to control the discretion of the Board by a judicial declaration of a general administrative rule for future control of the Board in matters purely administrative.

A true Copy.

Teste.

*Clerk of the United States Circuit Court
of Appeals for the Seventh Circuit.*

And on the same day, to-wit: On the thirteenth day of July 1939, the following further proceedings were had and entered of record, to-wit:

Thursday, July 13, 1939

Court met pursuant to adjournment

6707

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

THE FALK CORPORATION, RESPONDENT

Before Hon. EVAN A. EVANS, Circuit Judge; Hon. J. EARL MAJOR, Circuit Judge; Hon. WALTER E. TREANOR, Circuit Judge

Petition for enforcement of order of the National Labor Relations Board

Whereas the National Labor Relations Board has petitioned this Court for an order enforcing its order entered April 18, 1938, direct-

ing the respondent, The Falk Corporation, to cease and desist from dominating, interfering and contributing to the support of the Independent Union of Falk Employees or any other organization of its employees, or interfering with the employees' right to self-organization and collective bargaining; and ordering the respondent to withdraw all recognition from the said Independent Union, and to post notices that it will cease and desist as aforesaid and withdraw recognition from the said Independent Union; and

Whereas this Court on March 7, 1939, filed its opinion upholding the order of the Board,

It is hereby ordered that the Falk Corporation, respondent herein, cease and desist from (a) dominating or interfering with the formation or administration of the Independent Union of Falk Employees or of any other labor organization of its employees and from contributing financial or other support to said Independent Union or any other labor organization; (b) from interfering with, intimidating, restraining, coercing, or endeavoring to coerce, its employees in their right to form, join, or assist any labor organization or in exercising their right to freely and collectively bargain through representatives of their own choosing, or to freely engage in concerted activities for the purpose of collective bargaining.

It is further ordered that said respondent withdraw recognition of the Independent Union as the representative of all or any of its employees for the purpose of dealing with it, the respondent, concerning grievances, labor disputes, wages, or rates of pay, hours of employment, and other conditions of employment of labor; provided, however, that the said employees shall remain free to choose at the coming election, or any future election held or conducted pursuant to the provisions of the N. L. R. Act, the Independent Union to represent them in labor relation dealings with respondent; and provided further, however, that the said employees be uninfluenced or coerced in said election by the said respondent and that the respondent refrain from exercising any influence or coercion over the employees in their selection of said Independent Union.

It is further ordered that the respondent shall post notices in conspicuous places throughout its Milwaukee plant and maintain such notices for a period of thirty consecutive days stating that the respondent will and does withdraw recognition of the Independent Union of Falk Employees as representative of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages or rate of pay, hours of employment, and other conditions of employment, and that it has, and does, completely disestablish such labor organization as such representative, and that it will not recognize it until and unless its said employees freely and of their own choice select the Independent Union as their representative to so deal with said respondent concerning said labor disputes.

It is further ordered that the respondent notify the Regional Director for the Twelfth Region in writing what steps it has taken

to comply with this order, within forty days from the date of this order or, in case application is made to the United States Supreme Court for a writ of certiorari, within thirty days from the date the Supreme Court affirms the decree or denies the writ, if it takes either action.

It is further ordered that this court, by this order, is not approving nor is it disapproving the direction of the National Labor Relations Board in reference to a coming or possible election by employees to choose their bargaining agency, and this order is not to be construed as approving any future action which does not place upon the ballot the names of all labor agencies or unions which are seeking the votes of the employees to represent them in collective bargaining with respondent over labor disputes, wages, etc.

And afterwards, to-wit: On the thirteenth day of September 1939, there was filed in the office of the Clerk of this Court, a Stipulation with reference to Exhibits to be transmitted to the Supreme Court, which said Stipulation is in the words and figures following, to-wit:

In the United States Circuit Court of Appeals for the Seventh Circuit

October Term 1938

January Session 1939

No. 6707

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

THE FALK CORPORATION, RESPONDENT

Stipulation

It is hereby stipulated and agreed by and between the attorneys for the parties in the above entitled case, that in the printing of the transcript in connection with the petition for writ of certiorari, no exhibits be printed in addition to those already appearing in print in the printed transcript of record as used in the Circuit Court of Appeals for the Seventh Circuit.

It is further stipulated that the Clerk of the Circuit Court of Appeals may transmit all of the original exhibits to the Clerk of the United States Supreme Court; and that the original exhibits shall be deemed part of the record before the United States Supreme Court, and may be considered by the Court and referred to by the parties with the same force and effect as though all of the original exhibits had been printed in the printed record.

It is further stipulated that the certified copy of record furnished by the Clerk of the Circuit Court of Appeals for transmittal to the Clerk of the United States Supreme Court, with a statement by the

Clerk contained therein that the original exhibits have been transmitted to the Clerk of the United States Supreme Court, shall be considered by the parties hereto as having the same force and effect as though the certified copy of the record actually contained copies of each and every exhibit in the case.

It is further stipulated that service of a printed copy of the record, by the petitioner for the writ of certiorari upon the National Labor Relations Board, without having printed therein the exhibits omitted by this stipulation, shall have the same force and effect as though the printed record contained the omitted exhibits, printed in full.

Dated this 27th day of March 1939.

ROBERT W. WATTS,
Counsel for National Labor Relations Board,
Petitioner.

LEON B. LAMFROM,
A. J. ENGELHARD,
Counsel for The Falk Corporation,
Respondent.

[Endorsed:] Filed September 13, 1939. Frederick G. Campbell, Clerk.

And afterwards, to-wit: On the — day of September 1939, the following further proceedings were had and entered of record, to wit:

Friday, September 15, 1939

Court met pursuant to adjournment

6707

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

THE FALK CORPORATION, RESPONDENT

Before Hon. OTTO KERNER

Petition for enforcement of order of the National Labor Relations Board

It is ordered that the stipulation of counsel filed this day, concerning preparation and transmission of the record in this cause to the Supreme Court of the United States, be, and it is hereby, approved.

Pursuant to the Stipulation of counsel and the foregoing Order, the Exhibits referred to in said Stipulation are transmitted to the Supreme Court of the United States under a separate certificate.

United States Circuit Court of Appeals for the Seventh Circuit

I, **FREDERICK G. CAMPBELL**, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing typewritten pages, numbered from 1 to 33, inclusive, contain a true copy of the Notice and Petition for Intervention, Order granting leave to intervene, Order taking cause under advisement, Opinion filed March 7, 1939, Order granting petition for enforcement, Order taking the matter of the form of decree under advisement, Opinion on the form of decree, Decree, Stipulation as to exhibits for use on Petition for Certiorari and Order approving stipulation, in the following entitled cause: National Labor Relations Board, Petitioner vs. The Falk Corporation, Respondent, No. 6707, October Term, 1938, as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In testimony whereof, I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 15th day of September A. D. 1939.

[SEAL]

FREDERICK G. CAMPBELL,
*Clerk of the United States Circuit Court of
Appeals for the Seventh Circuit.*

Supreme Court of the United States

Order allowing certiorari

Filed November 13, 1939

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted, and the case is assigned for argument immediately following No. 253.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Butler took no part in the consideration and decision of this application.

MICRO CARD

TRADE

MARK



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